Ontario

Ontario Human Rights Code Review Task Force,
an independent task force established by the Government of Ontario

Mary Cornish, Task Force Chair
Rick Miles, Member
Ratna Omidvar, Member

Achieving Equality:

A Report on Human Rights Reform

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Comments on this Report should be addressed to:

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Ministry of Citizenship
5th floor
77 Bloor Street West
Toronto, Ontario
M7A 2R9

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Honourable Elaine Ziemba
Minister of Citizenship
5th Floor
77 Bloor Street West
Toronto, Ontario
M7A 2R9

Dear Minister,

In accordance with our mandate, the Ontario Human Rights Code Review Task Force is pleased to submit to you today, a new vision for the achievement of equality rights in Ontario.

As you know, the Task Force was appointed to provide an independent review of human rights enforcement procedures in order to make recommendations for a fair and practical system for the enforcement of human rights in Ontario.

During the four and one half months in which the Task Force was active, we received information from the public; equality-seeking groups; the academic, business, labour and legal communities; the Ontario Human Rights Commission; the Board of Inquiry; relevant ministries, agencies and tribunals of the Government of Ontario; as well as other jurisdictions. Additionally, we received valuable information and advice from the Task Force's Advisory Committee.

We are, therefore, grateful to those members of the Ontario public who gave generously of their time, provided us with many good ideas, demonstrated a profound commitment to the task at hand and who worked collaboratively to accomplish our mandate.

As your Government is well aware, the issues raised by this report are serious and urgent.

Proper justice is currently being denied to claimants' rights. They are issues which are important not only to Ontarians but to everyone in the country and elsewhere who have looked to Ontario as a leader in human rights enforcement.

Our consultations and research have led us to the conclusion that the current enforcement system for the protection of human rights needs to be radically altered to fulfil its mandate. We believe that the recommendations we are putting forth today create a structure which will give Ontarians the ability to start realizing their equality rights.

We urge you therefore to promptly adopt our report, "Achieving Equality", as the blueprint for a fair and practical system for the enforcement of human rights in Ontario.

Mary Cornish,
Chair

Richard Miles,
Member

Ratna Omidvar

Ratna Omidvar,
Member

Task Force

The Ontario Government appointed three people to the Task Force:

Mary Cornish, Chair. She is a respected human rights and labour relations lawyer, who is co-founder of Ontario's Equal Pay Coalition and a member of the Premier's Council on Health, Well-Being and Social Justice.

Rick Miles, Member. He has been a dedicated advocate for the disabled community, specifically in the areas of housing and transportation. He has held senior administrative positions with government and most recently with the Handicapped Action Group Incorporated in Thunder Bay.

Ratna Omidvar, Member. Through her involvement in grass-roots organizations, she helped expand services to Toronto's multi-ethnic community. She is currently Executive Director of Skills for Change, and the newly-elected president of the Ontario Council of Agencies Serving Immigrants.

Advisory Committee

The Ontario Government named 13 members to the Advisory Committee to provide assistance and community input to the Task Force. They are:

Sedef Arat-Koc, of Peterborough, a noted professor, lecturer and writer on citizenship issues and women's rights;

Elizabeth Bateman, a community legal worker who advocates for tenants in the area of human rights and housing;

William Black, Director of the Human Rights Research and Education Centre at the University of Ottawa, who has written and spoken extensively on human rights issues;

Emily Carasco, an associate professor at the University of Windsor's Faculty of Law, who advocates for the legal rights of women and minorities;

Mila Chavez-Wong, a city and regional councillor for Sudbury and District, and Vice President of the Ontario Immigrant Network;

Maureen Farson, a lawyer specializing in disputes arising from work performance matters, pay equity and human rights issues on behalf of employers;

Mary Fortier, a former president of the Hearst Metis and Non-Status Indian Association, who, as a person with a disability, has a strong commitment to equality rights for persons with a disability;

Beverley Johnson, an officer who has been with the Ontario Human Rights Commission for 18 years and is a member of the Ontario Federation of Labour Human Rights Committee.

Arnold Minors, an organisational effectiveness consultant specializing in social justice, especially anti-racism, employment equity and human rights;

Bruce Porter, Coordinator of the Centre for Equality Rights in Accommodation, who is actively involved in defending the rights of poor citizens;

Manuel Prutschi, National Director of Community Relations for the Canadian Jewish Congress, has played an important role before courts and tribunals across Canada, in cases dealing both with discrimination arising out of religious observance and the activities of anti-Semites and other racist extremists;

John Southern, a long-time advocate for the rights of disabled persons and the producer of The Radio Connection, a program which focuses on disability issues.

Thomas Warner, a founding member of the Coalition for Lesbian and Gay Rights in Ontario;

ACKNOWLEDGMENTS

A task of this size and scope naturally requires the contributions of many people for success. We are grateful to the many people involved in ensuring the success of the seven public meetings held across the province and to those involved in the translation, and editing and printing of the report. The Task Force acknowledges the assistance of the Policy Divisions of the Ministry of Labour and the Ministry of the Attorney General, particularly, the assistance of Margot Lettner and David Lepovsky.

You should know that the Task Force team have worked long and hard to assist us in fulfilling our mandate. Roxann Kennedy, Lucy Liegghio and Sandy Nesbitt contributed their excellent secretarial skills; Debbie An and Nadia Jevremovic provided the administrative support necessary for the success of our task. Cathy MacPherson contributed her policy expertise. Howard Mirsky and Pat Takeda provided policy and communications support. April Burey our Senior Legal Counsel provided valuable legal expertise. Sharmini Peries successfully performed the often difficult tasks of administering the Task Force and coordinating the Task Force's consultation process. Boris Uléhla provided us with many invaluable skills, legal research, French language services and assistance in editing of the report. Boris worked tirelessly to ensure our report was produced by our deadline. Lastly, we would like to express a special note of thanks to our Senior Policy Advisor, Kathleen Ruff, for her comprehensive knowledge and experience in human rights enforcement which was central to the development of the report. The work of the Task Force team was crucial to our ability to provide you with a timely and effective report.

TABLE OF CONTENTS

Letter to Minister i
Task Force iii
Advisory Committee iv
Acknowledgements v

I. SUMMARY: A CALL FOR CHANGE 1

Overview 1
Highlights of New Systems Advantages 4

II. THE TASK FORCE 8

Why the Task Force was Created 8
What the Task Force was Asked to Do 9
Task Force Dealt only with Enforcement Issues 10
Challenges the Task Force Faced 10

III. CONSULTATION 12

Advisory Committee 12
The Issues Paper 12
Communications 13
Community Participation Fund 13
The Public Meetings 13
First Nations and Aboriginal People 14
Ontario Human Rights Commission 14
Office of the Boards of Inquiry Panel 14
Strategic Consultations 15
Research Consulted 16

IV. PRESENT ENFORCEMENT SYSTEM 17

Overview 17
Profile Of The Ontario Human Rights Commission 18
Profile of Boards of Inquiry 19

V. WHAT THE TASK FORCE WAS TOLD 20

What People said about the Present System 20
What People Called For 20

VI. OVERVIEW OF TASK FORCE ANALYSIS AND PROPOSED REFORMS 29

VII. FIRST NATIONS AND PEOPLES OF ABORIGINAL ANCESTRY 31

Introduction 31
The Present System 31
Research 32

VIII. OVERVIEW OF PROPOSED NEW HUMAN RIGHTS ENFORCEMENT PROCESS 34

Independence of New System 34
Role of Equality Services Board 34
Role of Human Rights Ontario 35
Role of New Equality Rights Tribunal 36
Claim Resolution Process 36

IX. ENSURING THE INDEPENDENCE AND COMPETENCE OF THE NEW ENFORCEMENT SYSTEM 40

Rebuilding Confidence in the System 40
The Equality Rights Appointments Committee - Ensuring Effective Appointments 40
Independent Status For Human Rights Bodies 43

X. ACHIEVING THE CODE'S PURPOSE 45

Code Has Near Constitutional Status 46
Systemic Discrimination Requires Positive Action 47

XI. PROVIDING SUPPORT FOR CLAIMANTS 50

Claimants need Advocacy Services 50
Advocacy Services should be Community-Based 51
Need for Integrated Overall Enforcement System 53
Options Rejected 53
Need for an Equality Services Board 54
Structure 54
Role of Commissioner and the Board 55
Services to be Provided by the Equality Services Board 56
Board Must be Responsive to Regional Concerns 59
Standards 59
Options should be Provided 61
Advantages of a New System to Provide Advocacy Services 61

XII. REVITALIZED HUMAN RIGHTS COMMISSION - "HUMAN RIGHTS ONTARIO" 64

Introduction 64
Advisory Council 64
Relationship between Human Rights Ontario and Equality Seeking Groups 65
Relationship between Human Rights Ontario and Respondent Community 66
Mandate 67
Regulation or Rule-Making Power 68
Other Strategic Approaches 70
Number and Role of Commissioners 75
Resources and Coordination 79
Accessibility 80
Appointment of Chief Commissioner and Commissioners 81

XIII. FILING HUMAN RIGHTS CLAIMS 83

Who Can File Human Rights Claims 83
Investigation of Claims 84
Providing Assistance to Claimants 86
Processing Rights Claims More Effectively 86
Use of the Officer Order Approach 87
Quick Dismissal of Claims without Merit 88
"Trivial, Frivolous, Vexatious and Made in Bad Faith" Claims 90
Dismissing Claims that are Untimely 91
Protecting Rights Claimants from Retaliation 92

XIV. OTHER CLAIMS ROUTES - CIVIL AND CRIMINAL 94

Civil Action in the Courts 94
Criminal Actions in the Courts 96

XV. OTHER CLAIMS ROUTES - LABOUR ARBITRATION 98

Putting Human Rights Protections in Every Collective Agreement 98

XVI. EQUALITY RIGHTS TRIBUNAL 108

Access to a Hearing 108
Need for a Permanent Hearing System 108
An Equality Rights Tribunal 109
Tribunal Advisory Committee 112
Appointment Process 112
Qualifications for the Tribunal 113
Adjudication Services 114
Associate Chairs 115
Vice Chairs 115
Mediation Services 116
Office of the Registrar 120
Resource and Training Centre 122
Tribunal Counsel Office 124
Regional Access 125
Staffing 126
Procedures and Powers of the Tribunal 127
Inquiry Active Adjudication 128
Expedited Hearings 130

Power to Assign One or More Adjudicators 131
Initial Hearings 132
Time Limits to be Imposed on Process 133
Full Hearing 134
Who Should be Part of a Hearing Process 134
Necessary Power 135

XVII. HOW THE NEW CLAIM SYSTEM WORKS 139

For Individual Claimants 139
For Group Claimants with Systemic Cases 141
For Claimants Challenging Equality Initiatives 141
For the Human Rights Ontario Claimant 142
For Respondents 142

XVIII. REMEDIES AND MONITORING 144

A Call for Stronger Remedies 144
Proper Remedies for Hurt to Self-Esteem Caused
  by Discrimination 144
Proactive Remedies to Overcome Discrimination 146
Order to Cease and Desist from Discriminatory Practices 148

XIX. RECONSIDERATION AND ENFORCEMENT OF TRIBUNAL DECISIONS 149

Reconsideration of Tribunal Decisions 149
Enforcement of Decisions 150
Appropriate Fines 151
Order for Payment of Legal Costs Inappropriate 151

XX. TRAINING THOSE WHO WORK IN THE NEW SYSTEM 153

Need For Human Rights Training 153
Coordination of Training for Administrative Tribunals 153

XXI. ROLE OF GOVERNMENT AND MAJOR PUBLIC BODIES 155

Strong, Positive Leadership on Equality Rights 155
Coordination of Equality Enforcement 158
Proactive Responsibilities of Each Ministry
and Major Public Body 159
Immediate Review of Existing Rights Claims 161

XXII. PROACTIVE ROLE FOR EMPLOYERS, ACCOMMODATION AND SERVICE PROVIDERS 164

Proactive Human Rights Policy 164
Employer Proactive Measures 165
Proactive Measures for Service Providers 171

XXIII. EDUCATION AS A PROACTIVE STRATEGIC MEASURE 173

Unique Education Role of Human Rights Ontario 173
Human Rights Education in the Schools 176
Access to Teacher Training 177
Teachers Should Promote Human Rights 178
Hiring Policies of Schools, Colleges and Universities 178
Providing Equitable Services to Students 179

XXIV. CONCLUSION: MOVING FORWARD 181

XXV. WHAT HAPPENS NOW - PLANNING THE REFORM 183

A Role of the Ontario Human Rights Commission 185
Role of Government 186
Role of the Ontario Liberal Party and the Ontario Progressive Conservative Party 186
Making the Transition - a Proposed Timetable 187

ENDNOTES 190

SUMMARY OF RECOMMENDATIONS 200

APPENDICES

Terms of Reference 1
Human Rights Ontario - A Graphic Representation 2
Equality Rights Tribunal - A Graphic Representation 3-1
Human Rights Tribunal - A Graphic Representation 3-2
Getting To the Tribunal - A Graphic Representation 3-3
Flowchart of Tribunal Process 3-4
Regional Equality Services 4-1
Achieving Equality - Glossary 5
Who We Consulted 6

"prejudice and discrimination have no place in Ontario"[1]

I. SUMMARY: A CALL FOR CHANGE

Reform of the current human rights enforcement system is long overdue. Changes are needed urgently.

Ontario has changed considerably since the sixties, when the present system was conceived. The Ontario Human Rights Code Review Task Force was entrusted with the challenge of proposing a new system that could be implemented immediately, yet would see Ontarians through the 1990s and into the next century.

The system put forward by the Task Force will do just that. It is built around four cornerstones for achieving equality.

- a consumer perspective which presents consumers of the system with options on how best to deal with a human rights claim;
- a community-driven focus which empowers the regions of Ontario and their many communities to play a major role in ensuring a strong and responsive human rights system;
- a proactive approach of building equality into Ontario's institutions to ensure compliance without having to file Tribunal claims;
- an effective but accessible claim resolution process where compliance is not forthcoming.

Overview

The enforcement model proposed by the Task Force flows from a new understanding of how to achieve equality which has developed over the last 20 years or so. The current model was developed when discrimination was understood more as an individual problem. This view is outdated and wrong.

The major problem faced by equality seekers is the wide-spread often deep-rooted patterns of discrimination affecting many members of a disadvantaged group. The formidable barriers to equality facing groups protected by the Code have been documented again and again. They are known as systemic discrimination. Such discrimination can be unintentional or overt and intentional.

The Task Force, therefore, looked at the issue of enforcement from this broad, systemic perspective. Effective enforcement means that the persons and groups who are discriminated against are empowered and enabled to achieve their equality rights in the *Code*.

The Task Force is not naive. It realizes that the job of ending discrimination in this province is a massive one and will not happen overnight. Discrimination is entrenched in Ontario society. This fact must be acknowledged so that the society can move forward and take down the barriers.

Ending this blight of inequality will demand involvement, commitment and courage as all Ontarians face up to and acknowledge their part in the system's discriminatory practices.

The devastation caused by these discriminatory practices must be acknowledged so that everyone can move on and find solutions.

The Task Force believes that the success of an enforcement system can ultimately be measured by one test - did the system lead to measurable and real reduction in the discrimination faced by its citizens who are protected by the Code.

The Task Force believes that the current system fails this test. Persons and groups who experience discrimination are denied proper justice in the human rights enforcement system. The Task Force heard the frustration, anger, and impatience of people and groups who experience discrimination.

What then can be done to make the rights under the *Code* real and accessible? The Task Force proposes a system which will meet the test of progressive and substantial reduction of discrimination.

The major thrusts of this system are:

- empowerment and support of those who experience discrimination in order that they may direct the methods used in achieving equality,
- promotion of a compliance culture throughout all institutions of society by the adoption of proactive measures and policies.
- establishment of an accessible, effective, and expert Tribunal to assist in resolution of human rights claims either through mediation or adjudication.

It is with these thrusts in mind that the Task Force proposes a major departure from the current enforcement system.

... major recommendations ...

The human rights system would now have:

- empowerment of the claimant community who now have direct access to a hearing of their claims; can direct their claim presentation and determine the approach of dispute resolution through mediation and\or adjudication;
- a revitalized Commission to be known as "Human Rights Ontario which would take on a strong role in acting against discrimination and in favour of equality by taking strong proactive systemic initiatives;
- an expert Equality Rights Tribunal encompassing human rights, employment equity and pay equity and offering either mediation and\or adjudication services as equally respected ways of resolving claims disputes;
- a provincial Equality Services Board representing the claimant community in all the regions of the Ontario and providing consumer-oriented and community-driven advocacy services to claimants through
    - establishing Equality Rights Centres around the province staffed primarily by lay advocates to represent claimants;
    - the development of specialized units of expertise in grounds and areas covered by the Code; and
    - strategic partnerships with community groups.
    - establishment of a Significant Case Fund to assist equality seeking groups to bring forward test cases to achieve broad-based systemic change.
- a new independent status for human rights bodies including the naming of an Equality Rights Appointments Committee composed of respected human rights leaders who would recomend to the Premier candidates for the senior appointments in the new system.

... other major recommendations ...

- Human Rights Ontario, unlike its predecessor, will leave behind the burden of investigation, settlement, screening and carriage of all the claims filed and focus on its existing mandate to achieve equality through systemic change.
- establishment of links with those responsible for ensuring equality including employers and accomodation and service providers through a Commissioner for Compliance Services who would provide assistance on techniques and practices for implementing equality;
- where necessary, providing human rights adjudicators with powers to fashion strong proactive remedies and enforce them effectively;
- provisions ensuring non-compliance is met with serious sanctions;
- amendment of the *Code*'s preamble to incorporate an understanding of systemic discrimination and the importance of positive measures;
- measures requiring that the Government assume a leadership role in advancing equality rights; and
- provision for Human Rights Ontario to plan and implement strategic education initiatives and training as a key enforcement strategy to ensure, advance and maintain a culture of equality.

Highlights Of New Systems Advantages

The Task Force believes the human rights enforcement system it recommends has many benefits for the equality seekers, for those responsible for ensuring equality and for society in general:

... discrimination will be reduced ...

A system which is accessible, open and effective will lead to greater reduction in discriminatory practices.

... timely access to a hearing ...

Delay works against both claimants and respondents in that evidence suffers. morale declines, and costs rise. Justice delayed is justice denied. Achieving equality demands that claims proceed to hearing quickly and that decisions are rendered promptly.

... an open process ...

Under the present system, the Commission has sole control of cases. Both claimants and respondents have found this extremely frustrating, time-consuming and inefficient.

The system the Task Force recommends is an open one with a range of options for the system's consumers. Claimants from the outset will have control over how the claim is framed and argued and the opportunity to make informed choices as they proceed through the process.

Respondents would also have direct information about the claim and how it will proceed. The respondent is consequently also in a better position to make informed decisions which may lead to earlier settlements and to less cost.

... a clearer process ...

The system the Task Force recommends, provides clear roles and responsibilities for the systems components:

- The Equality Rights Centres provide services for claimants;
- a Compliance Services Unit will offer information to those responsible for ensuring equality,
- the Equality Rights Tribunal provide settlement services to the parties; and adjudicators are responsible for hearings of cases.
- The new Commission is no longer involved in individual claims. Its role is to represent the public interest by promoting and enforcing human rights on the overall, systemic level.

Everyone would know exactly who was doing what.

... a better investigation method ...

The present mandatory investigative process for every claim simply does not work well. The requirement for a discovery and disclosure process at an early stage would, in the Task Force's view, assist both claimants and respondents. Investigation would only be ordered where this process had not led to sufficient disclosure of evidence.

... a voluntary settlement process ...

"Settlements" under the present system are frequently less than voluntary. By offering specialized, trained mediation services, which are voluntarily chosen, the Task Force believes that many cases will be settled with better results without the present negative climate of coercion.

... a fairer, quicker way of dealing with unfounded claims ...

Large amounts of time and money are spent to obtain a final decision by the Commission dismissing the claim, or with the claimant finally abandoning the claim. The Task Force believes that providing advocacy services in the community will provide claimants with the support and advice they need and are likely to trust.

... more consistent standards and procedures ...

A significant advantage to establishment of a permanent Equality Rights Tribunal, instead of the present ad hoc system, will be the development of clear, consistent standards and procedures which will make the system more accessible and less costly. Trained lay advocates could function well in the new clearer system.

... coordination with other bodies dealing with equality rights ...

The Task Force believes that bringing together Pay Equity, Employment Equity and Human Rights adjudication under one body will help prevent confusion and duplication. Resources can be used to maximum benefit by the sharing of space, administration, technology, library resources, etc. It will be simpler for claimants and respondents to go to one body with a case dealing with equality rights.

... better information about human rights decisions ...

The Tribunal will have a Resource and Training section to ensure its staff and adjudicators and everyone working in the system are informed and up-to-date.

... stress on remedial, constructive solutions ...

The Task Force believes that Human Rights Ontario and the Equality Rights Tribunal will be better positioned to craft solutions which will contribute significantly to meeting the test of progressive, measurable and substantial reduction of discrimination. Rather, than be consumed with processing complaints, this tandem will be able to act creatively and with strength on many fronts at once.

The Task Force is confident that the system, as set out in more detail in the remaining sections, places Ontario on a firm footing in its quest to achieve equality.

II. *THE TASK FORCE*

Why the Task Force was Created

The Government of Ontario created the Task Force after hearing from many Ontarians that they no longer have confidence in the way the *Ontario Human Rights Code* is enforced.

The *Code* is the law that protects every Ontarian from discrimination because of her or his race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status, sexual orientation, disability, receipt of public assistance, or record of offences. The *Code* covers key areas in a person's life - employment, housing, access to services, goods and facilities, contracts, and membership in unions and vocational associations.

The Supreme Court of Canada has ruled that, apart from the Constitution, human rights laws are the most important laws in the country because they protect the basic human rights and values on which our society is founded. Human Rights laws should be respected and enforced with special seriousness, said the Court.

The Constitution is the first and foremost law of Canada and sets out the rules that federal and provincial governments must obey. Because the *Human Rights Code* has close to constitutional status, everyone has a strong legal and moral duty to respect and advance its requirements. In passing and putting into effect other laws, and in all policies and practices, governments have an obligation to respect the standards of the *Code*.

In spite of its importance, the *Ontario Human Rights Code* is not providing effective human rights protection. For a number of years, people experiencing discrimination have pointed out serious problems that prevent the *Code* from achieving its purpose. In 1991 more than 40 community groups formed a Coalition for Human Rights Reform. The Coalition called on the Ontario government to take action by appointing an independent task force with a six-month mandate to recommend changes to the *Code*.

Community groups were not the only ones expressing dissatisfaction with the present system of enforcing human rights. Employers, landlords, and service providers also identified problems they had experienced in the enforcement process from their perspective as bodies required to implement equality rights.

In addition, the Ontario Human Rights Commission itself, which presently has sole authority to handle rights claims, spoke of major problems with the present *Code* and asked the government to take action.

In light of wide criticism from so many quarters, the Ontario government appointed this independent Task Force to review the present enforcement system and recommend changes to make it more effective.

What the Task Force was Asked to Do

The Minister of Citizenship, Elaine Ziemba, announced the creation of the Task Force and named its chair, Mary Cornish, on December 10, 1991. On February 12, 1992, the Minister named the other two Task Force members, Ratna Omidvar and Rick Miles, as well as a 12-member Advisory Committee with a diverse representation of people with an interest in human rights from all around the province. One additional person was subsequently added to the Advisory Committee.

The mandate given to the Task Force was to

- review the current procedures for enforcing human rights in the *Ontario Human Rights Code* and
- make recommendations for a fair and practical system of enforcing human rights in Ontario.

The Task Force was asked to hold public meetings in different parts of the province and to consult widely with a variety of sources, including equality seeking groups, business, labour, government, academic, and legal communities, and interested individuals. In addition, the Task Force was to seek information and assistance from its Advisory Committee, from the Commission itself, and from the Chair of the Board of Inquiry Panel.

A separate consultation process was to take place with members of the First Nations in light of the government's recognition of the First Nations' inherent right to self-government.

The Task Force was to hand in its report to the Minister of Citizenship, together with its analysis, findings, and recommendations, by June 30, 1992.

The time frame was short because people wanted speedy action. This proved a challenge for the Task Force and for the many different groups and individuals who wished to participate. The Task Force was impressed by the wide-ranging, thoughtful presentations it received from a diversity of groups and individuals around the province. This participation was vital to the Task Force in carrying out its work. The many groups and individuals who contributed their ideas are to be commended for meeting the challenge in such a positive and impressive way.

The Ontario government, recognizing the situation as serious and urgent, has indicated its intention to bring in changes to strengthen the *Code* as soon as possible after it receives the Task Force's report and recommendations.

Task Force Dealt only with Enforcement Issues

The mandate of the Task Force was to look only at what changes are needed to better enforce the rights presently protected by the *Code*. It had no mandate to look at whether additional rights should be covered by the *Code*. The Minister informed the public that a review of the substance of the *Code* would be carried out within the Ministry of Citizenship to determine whether changes should be made in order for the *Code* to meet the standards of the *Canadian Charter of Rights and Freedoms*.

Challenges the Task Force Faced

While it is clear that the enforcement of the *Code* is not working well and needs to be fixed, how to make it work more effectively is not so easy to determine.

The way the *Code* is enforced has remained substantially the same since it was first introduced in 1962. Other human rights laws across Canada modelled themselves on the 1962 Act. Many of the problems experienced in Ontario are also problems elsewhere.

The Task Force realized early on in its mandate that the problems are serious and systemic and cannot be resolved simply by tinkering with the system. Significant change is needed. Yet such change must address a number of needs.

First, changes must respond to the needs of all the groups covered by the *Code*. The *Code* covers many different groups and areas of activity. The needs of people with a disability who are denied access to a workplace or people with AIDS denied insurance coverage are very different from the needs of single mothers on welfare denied housing or people of colour systematically denied promotion opportunities.

Second, the circumstances of the respondent community vary greatly as well. Employers, landlords, service providers, unions, and professional associations are all required to meet the standards of the *Code*, and each operates in its own particular context. Even in the same context, great variations exist. For example, an employer may be a large corporation, a small business with one employee, or a community organization. A service provider may be a small business, a non-profit agency, or the Ontario government. These differences all need to be taken into account.

Finally, the needs and rights of those currently working in the enforcement system must be considered. The Task Force was faced with considering fundamental changes to an existing system staffed with dedicated public employees who have been under intense public criticism for many years. Much of the criticism should more fairly have been directed at the system itself rather than at the people who staff it. The Task Force realized that the process of change is a stressful one and took seriously its responsibility to keep staff concerns in mind when proposing reforms.

III. CONSULTATION

The appointment of the Task Force was greeted with much excitement and anticipation. Many individuals and groups in Ontario had called for a review of the *Code*. Now, they expected to be able to participate in this exciting opportunity to effect change. The Task Force strove, at all times, to include as many of these individuals and groups as its timeframe and resources allowed. This section explains how the Task Force did this.

Advisory Committee

The Minister of Citizenship greatly assisted the work of the Task Force by appointing 13 highly energetic and expert Ontarians to the Task Force's Advisory Committee. As a group they were representative of many communities concerned with human rights in Ontario. The Task Force found the Committee to be an invaluable component of its *Code* review. It met for eight full days in the space of four and an half months. It participated in designing the consultation process and in considering the principles and models that Ontarians want for a new enforcement system. With resource materials the Task Force provided to facilitate its participation, the committee members engaged in detailed and invaluable discussions with the Task Force which, in turn, resulted in timely and very thoughtful advice.

The Issues Paper

The Task Force acted quickly after its appointment to reach out to the many individuals and groups eager to participate in the *Code* review. It printed and distributed 10,000 copies of an issues paper: "Getting Human Rights Enforced Effectively." This paper provided a base of information, noted the problems with the current system, posed many questions for consideration, and identified a variety of solutions. For example, it posed the following questions: What body should promote the fair and effective enforcement of human rights and what should that look like? Should there be a separate resolution process for Aboriginal peoples? What procedures best identify, investigate, resolve, and decide human rights issues? To increase the issue paper's accessibility, the Task Force produced a two-page summary and translated it into Chinese, Vietnamese, Punjabi, Urdu, Hindi, Tamil,. Portuguese, Italian, Spanish, Polish, and Greek. It was also provided in accessible formats to people with disabilities.

Communications

The communications strategy adopted by the Task Force served to make as many Ontarians aware of the *Code* review as possible. As a first step, advertisements were placed by the government in 14 newspapers across the province announcing its 1992 Consultation Program, including the *Code* review. Second, the Task Force sent a letter to over 5,000 individuals and groups inviting them to participate in the *Code* review. Third, on March 9, 1992, the Task Force held a press conference to release its issues paper and to announce the seven cities in which public meetings would be held in April. Over 1,000 media advisories and news releases were sent to daily and weekly newspapers, television and radio media, Francophone media, ethnic media, disability media, specialty media, and native media. Fourth, efforts to publicize the consultation process to people with visual disabilities were made through reading services and special media affiliated with the Canadian National Institute for the Blind. Finally, the work of the Task Force was communicated through interviews that Task Force members and staff gave to print and broadcast media representatives.

Community Participation Fund

The Task Force was mindful that much valuable input needed to be obtained from groups facing certain barriers to effective participation. To assist community groups in overcoming these barriers, it provided resources in the form of a Community Participation Fund. This fund encouraged participation from both historically and systemically disadvantaged groups and groups facing geographic and physical barriers. It assisted groups to do outreach to find out the concerns of their communities and bring those concerns to the Task Force. It also promoted discussion of the issues paper.

The Public Meetings

Individuals and groups actively participated in the public meetings the Task Force held in April. Accessible public meetings were held in seven cities that the Advisory Committee helped choose - Windsor, London, Ottawa, Toronto, Sudbury, Thunder Bay, and Scarborough. Generally speaking, mornings were devoted to general discussion, afternoons to presentations by groups and individuals, and evenings to an open forum. The Task Force observed that the general discussions allowed participants to focus their ideas and to build consensus among stakeholders; that, in their presentations, groups and individuals eloquently voiced issues of particular concern and made thoughtful recommendations; and that the open forums encouraged less formal dialogue, which brought other important concerns to the fore.

First Nations and Aboriginal People

The Task Force was asked to conduct a separate consultation with Ontario's First Nations and people of Aboriginal ancestry. In light of the provincial government's recognition of the inherent right of self-government of the First Nations, much time and effort was being directed to constitutional reform. Gordon B. Peters, Regional Chief of the Chiefs of Ontario, nevertheless, requested that the Ontario Native Council on Justice take a leadership role in preparing a response from Ontario's First Nations and people of Aboriginal ancestry. In turn, the Ontario Native Council on Justice coordinated a meeting with the Task Force, council members and other people of Aboriginal ancestry, which took place on May 15, 1992. This meeting was considered, by all attending, to be merely a starting point in formulating a comprehensive response to human rights enforcement in Ontario. The Ontario Native Council on Justice intends to explore the ideas proposed at this meeting more fully at its next annual general meeting. When Ontario's First Nations and peoples of Aboriginal ancestry formulate a position, they will make representations directly to the government.

Further participation by native community organizations took the form of presentations at the public meetings.

Ontario Human Rights Commission

The Ontario Human Rights Commission was part of the chorus of voices calling for a review of human rights enforcement. Throughout its review, the Task Force welcomed the Commission's valuable insights and suggestions for providing Ontarians with a fair, accessible, and practical enforcement system. The Task Force benefitted greatly from both the Commission's extensive and helpful brief and the regular meetings with the Chief Commissioner, the Vice-Chair of the Commission, Commissioner Reva Devins, and other Commission staff who assisted them. In particular, the Task Force acknowledges the able assistance of Reva Devins, who acted as the liaison between the Commission and the Task Force. The Task Force also wrote directly to all Commission staff and welcomed their helpful assistance and advice.

Office of the Boards of Inquiry Panel

In addition to meetings held with the Ontario Human Rights Commission, the Task Force regularly met with the Office of the Boards of Inquiry. Through discussions with Maryka Omatsu, Chair of the Boards of Inquiry and her staff, the Task Force gained a better understanding of the current operation of the Boards of Inquiry and of the Chair's vision for a new adjudication system. The Task Force further benefitted from the Chair's consultation with the adjudicators who make decisions within the constraints of the current system. Such information assisted the Task Force in devising a new approach to adjudication of human rights claims, which will assure full and equal access to a hearing.

Strategic Consultations

In addition to the public consultations, a number of other meetings were held.

- The Task Force held two round table discussions with deputy ministers of relevant ministries. As Ontario's second largest employer and service provider, the Government could have a major impact, in the view of the Task Force, by taking proactive measures before the to file a claim arises. The Task Force believed that there was a need to address proposed proactive measures that, if adopted by ministries, will deal with discrimination before the need of filing a claim arises.

- The Task Force met with Chairs of other adjudicative and regulatory agencies to canvass solutions to commonly experienced problems.

- The Task Force met with the Employment Equity Commissioner, the Pay Equity Commissioner, and the Chair of the Pay Equity Hearings Tribunal to discuss the possible interrelationship of the three equality areas.

- The Task Force solicited views from the private and business sector, which resulted in submissions to the Task Force from, for example, the Institute for Equality and Employment and the Toronto Board of Trade.

- The Task Force met with representatives from the union community, including the Ontario Federation of Labour, the Canadian Auto Workers, the Canadian Union of Public Employees, the United Steelworkers of America, and the Ontario Public Service Employees Union.

- The Task Force consulted the legal community through the Labour Law subsection of the Canadian Bar Association - Ontario, the Canadian Association of Labour Lawyers, and the Inter-Clinic Committee on Human Rights Reform.

- The Task Force consulted formally and informally with representatives of equality-seeking groups and benefitted greatly both from their perspectives on the current enforcement system and from their passionate arguments in favour of reform. These groups included the Coalition on Human Rights and Disability Issues, the Minority Advocacy Rights Council, the Advocacy Resource Centre for the Handicapped, Persons United for Self-Help, the Centre for Equality Rights in Accommodation, the Canadian Jewish Congress, the Women's Legal Education & Action Fund, the Urban Alliance on

Race Relations, the Ad Hoc Committee for Wei Fu, and the Black Action Defence Committee.

- The Task Force also met with a number of individuals with expertise in the human rights system.

Research Consulted

The Task Force benefitted from research carried out on its behalf by the following groups and individuals with community and/or legal expertise in human rights.

- The Advocacy Resource Centre for the Handicapped analyzed enforcement and regulations as methods of dealing with systemic discrimination.

- The Centre for Equality Rights in Accommodation examined the role of claimants, community groups, and the Human Rights Commission in seeking to achieve equality rights.

- The Inter-Clinic Workgroup looked at what process should be followed in rejecting claims and whether it should be possible to give priority to a case in a particularly urgent situation.

- The Ontario Coalition Against Poverty examined how to make a claim process accessible and accountable to members of disadvantaged groups, particularly people who are poor.

- The Urban Alliance on Race Relations carried out research on what kinds of education strategies would best advance human rights and, in particular, how to inform people of colour of their rights.

- The Harvard Negotiation Project examined the issue of settlement and forms of alternate dispute resolution that could be used to better resolve rights claims.

- Mr. Justice Robert Reid, a recently retired judge of the Ontario Court (General Division) with special expertise in administrative law, examined what hearing process for rights claims would be appropriate and what provision should be made for appeals, reconsideration, and enforcement of decisions.

IV. ***HOW THE CODE IS ENFORCED AT PRESENT***

Overview

Under the *Code* at present all human rights claims must be handled by the Ontario Human Rights Commission. The *Code* says the Commission must investigate claims, try to settle them and, if this is not possible, either dismiss claims or send them to hearings in front of human rights Boards of Inquiry.

If a claim goes to a Board of Inquiry, the Human Rights Commission has carriage of the claim, which means that its lawyers present the case and argue what remedy should be given. If claimants do not agree with the position the Commission is taking, they can be represented by their own lawyer, if they have the resources for one.

Boards of Inquiry make decisions to uphold or reject claims and can order remedies, such as back pay or compensation for damage to self-respect.

For many years the Commission has had a backlog of claims causing long delays before claims receive attention. In an endeavour to overcome the backlog, the Commission introduced an "early settlement initiative" by which it tries to quickly settle claims without starting an investigation. According to Commission figures, 55 per cent of claims it closes were closed at the early settlement stage.

In 1991 only 2 per cent of cases were referred to Boards of Inquiry. Of the rest, a total of 66 per cent were settled (at the early settlement stage or later); 20 per cent were withdrawn; 10 per cent were dismissed by the Commission; 4 per cent were abandoned. The Commission advises that in 1992 approximately 3 or 4 per cent of cases were referred to Boards of Inquiry.

If a claim is not settled in the "early settlement initiative", it is usually many months, if not a year or more, before an investigation is begun. The chances of a case being referred to a Board of Inquiry are very low.

All decisions as to whether to refer a case to a hearing or dismiss it are made by the Commissioners themselves. It is usually a long, complicated process involving various different levels of staff, before a claim gets put before the Commissioners for a decision. The claimant is not present when the decision is made.

Because of long delays before cases get investigated, and because claimants have no choice over what happens to their claim and little chance of getting a hearing, many claimants say they feel pressured to accept settlements that they consider unsatisfactory and unfair.

Under the *Code* the Commission has the power to initiate claims of its own. It also has a broad mandate to carry out educational initiatives and give community leadership. Because of the backlog, and because the Commission has responsibility to handle all the many individual claims filed around the province, it has not been able to play a strong, effective role in dealing with systemic discrimination. Nor has it been able to carry out strong educational initiatives to advance human rights.

The Commission told the Task Force that, in its view, the present enforcement system is unsatisfactory and must be changed. The Commission said that it should no longer have control over access to hearings and that equality seeking groups should have the ability to take forward cases in the way they wish. The Commission stressed that it should play a strategic, proactive role in overcoming major problems of systemic discrimination in Ontario.

Profile of the Ontario Human Rights Commission

As of April 30, 1992, the Commission had a total of 241 employees. 77 staff were working at its head office in central Toronto and the rest in the following Commission offices around the province:

> Toronto Central, Toronto East, Toronto West, Ottawa, Kingston, Hamilton, St. Catharines, Thunder Bay, Kenora, Timmins, Sault-Ste-Marie, London, Windsor, Kitchener.

The Commission has set up the following units:

- Communications & Education Unit
- Legal Unit
- Regional Services Unit
- Finance & Administration Unit
- Systemic Investigation Unit
- Policy Unit

The Government provided funds to the Commission in the fall of 1991 to hire a special 48 person task force as a special project to help resolve the case backlog by December 1, 1992.

The Commission has its own employment equity plan. Figures this year, provided to the Task Force by the Commission, show that as a percentage of its total workforce, 40.2 per cent of Commission employees are white females; 15.6 percent are white males; 20.7 per cent are visible minority females; 14.8 per cent are visible minority males; 2.5 per cent are females with a disability; 1.3 per cent are males with a disability; 1.3 per cent are Aboriginal females; 0.4 are Aboriginal males; 2.1 per cent are francophone females; and 1.3 per cent are francophone males.

According to the figures, employees covered by the employment equity plan appear to be represented at the different classification levels. For example, employees of colour represent 22.2 per cent of senior management; 30 per cent of lawyers; 32.6 per cent of human rights officers, assistants and case coordinators.

Profile of Boards of Inquiry

There was recently created an Office of the Boards of Inquiry in order to coordinate the individual Boards of Inquiry which hear human rights claims. The Commission sends cases to the Minister of Citizenship requesting that they be heard by a Board of Inquiry. The Minister then appoints upon the recommendation of the Chair of this Office. The Office arranges for a hearing.

The Office has currently been developing training for new and existing adjudicators. It also is developing practice and procedure guidelines for hearings.

Adjudicators are chosen to hear each human rights claim on a case by case basis from a list of 37 persons. Members are appointed on a part-time basis. At present some 43 cases are being heard by adjudicators.

The Board of Inquiry Office has six positions. They are: Chair, legal counsel, articling student, registrar, adminstrator and secretary. The positions of Chair and counsel are both currently part-time positions.

V. *WHAT THE TASK FORCE WAS TOLD*

What People said about the Present System

The Task Force received 135 written submissions from individuals and groups. As well, 750 people made oral presentations and participated in discussions at the public meetings held around the province. The Task Force also carried out strategic consultations with particular interest groups, such as employers, unions, deputy ministers, human rights experts, legal experts, and equality seeking groups.

The strongest response the Task Force received, without a doubt, came from the equality seeking community, both in number and in depth of feeling. This is not surprising. Members of groups covered by the *Code* are hurting and hurting badly. They feel strongly that changes to strengthen the *Code*'s enforcement process must be made. They wanted the Task Force to know this.

Again and again, people who had made rights claims voiced their frustration, anger, and hurt with the present system. They criticized the excessive delays at every stage and the way they were disempowered so that they never knew the status of their case. They spoke of the barriers they encountered, both physical and attitudinal. They said staff of the Human Rights Commission were sometimes uninformed, insensitive, and biased. People with a disability said they could not always count on Commission staff to recognize or understand the discrimination they experienced. People with low incomes, lesbians, gay men, and people of colour spoke of being treated with disrespect.

The Task Force was told many times that the present system is seen as so ineffective that there is no point in making a claim. Those the *Code* is meant to serve said they have no confidence in the human rights system.

Major criticism was aimed at the exclusion under the *Code* of equality seeking groups and unions from a meaningful role, since they are not allowed to file claims and are rarely included in the development of education initiatives.

The investigation work of the Commission was the focus of much criticism by many, claimants and respondents. It was seen as slow and unproductive. Claimants and respondents were also dissatisfied with the present settlement process. Each side said they felt at times pressured by the Commission to accept settlements that, in their view, were neither fair, nor appropriate, nor voluntary.

Individuals, unions, community groups, and those responsible for ensuring equality described the many different roles played by the Commission as confusing and, at times, conflicting. Some said that individual human rights officers are sometimes helpful and dedicated, but are put in an impossible position where they can please no one.

Some employers' representatives said that the Commission does not reject trivial and vexatious claims promptly but lets them drag on, wasting people's time.

A frequent criticism was that the Commission is overwhelmed by individual claims that use up the Commission's resources, with the result the Commission has not challenged systemic discrimination in a strategic and proactive way. This was seen as a major defect. Many people said that unless deep-rooted patterns of systemic discrimination are targeted and overcome, the aims of the *Code* will never be achieved. There will continue to be an endless stream of victims filing individual claims while people with a disability, people of colour, women, and other disadvantaged groups will continue to be excluded from full and equal participation in the life of the province.

Many commented on the lack of widespread and effective education about human rights. Groups who are the most vulnerable to discrimination seem to be those who have the least information about their rights. People felt the Commission has not played a leadership role in carrying out human rights education. In fact, a number of people said that it was only on reading the Task Force issues paper that they learned the Commission has an education role. Many people felt the staff of the Commission and the Commissioners themselves should receive more training.

People spoke about the problem of intimidation and retaliation, not only against people who make a rights claim, but also against witnesses. They described cases in which people who have given evidence in favour of a respondent have been rewarded, for example, by a promotion, and they said the *Code* does not effectively protect people from retaliation.

The lack of independence of the Commission was criticized. It was seen as being part of government and lacking in credibility, particularly for a person wishing to file a claim against the Government itself. A number of people, including members of the Commission itself, argued that the Commission is hampered in carrying out its mandate by the fact that it is one of the agencies with the least independence from the Government. This means the Commission does not control its own administration and does not have the power, for example, to make all its offices accessible.

Members of the Commission itself noted that the human rights enforcement system has been undervalued and under-resourced for many years, particularly in light of the fundamental public importance of the *Code*'s mandate. Unless more resources are provided, said the Commission, it will not be possible to take on more proactive initiatives, such as systemic cases and educational outreach or to handle the volume of individual claims filed.

Many noted that the Commission is remote from the daily lives of people who experience discrimination. Some Commission offices are located in expensive, intimidating buildings where people who want to file a claim feel unwelcome; most are buried alongside other government departments and seem part of the bureaucracy and status quo. Some people alleged that the Commission has not dealt strenuously with claims filed against the Government or powerful organizations.

What People Called For

... speed ...

Almost everyone said they want a system in which rights claims are dealt with speedily. Unless a claim can be promptly resolved, the *Code* is of little use.

... empowerment ...

Many individuals and community groups called for a system that will give a stronger and more empowering role to people who make rights claims. Equality means more than just treating people the same on the surface, they said. It means changing deep patterns of exclusion and power imbalances and bringing about more equal relationships in society. The process of making a claim should empower people to bring about such a change.

... accessibility ...

The importance of full accessibility to the human rights system was emphasized many times. Physical and attitudinal barriers to people with physical and mental disabilities must be removed. The system must also be accessible to those who speak languages other than English and who come from cultures other than the dominant one.

... right to a hearing ...

A frequent recommendation from equality seeking groups was that every claimant should have the right to a hearing and that the present power of the Commission to block people from a hearing before a Board of Inquiry should be ended.

... settlements ...

A number of people said the Commission pressures and coerces claimants and respondents to accept a certain settlement by threatening either to send or not to send a case to a Board of Inquiry. Many people felt the Commission should not seek to impose settlements on the parties to a claim. Any settlement should come about voluntarily through the wishes of the parties themselves. The Human Rights Commission itself made the same recommendations.

... education ...

The importance of human rights education was strongly stressed by a great many people from both the equality seeking and respondent communities. A frequent recommendation was that human rights education should be part of the regular school system from kindergarten on. Another recommendation was that community groups should be used by the Commission in education initiatives to reach people at the grassroots level.

... community-based resources ...

A number of individuals and groups recommended that community-based human rights centres be made available to assist people making a rights claim. These centres would have trained advocates and lawyers to help people put forward their claim and take it either to a hearing or to a conciliation process. Many felt that community centres would be more accessible and receptive to people who experience discrimination. Others felt the greater involvement of community groups might lead to increased tension or conflict.

... more powers for human rights officers ...

Some employers, unions, and community members recommended that human rights officers be given more power to dismiss claims and make orders in claims. Submissions from two offices of the Human Rights Commission supported this idea. The Human Rights Commission recommended that human rights officers be given the power to refuse advocacy services to claims that lack merit, with their decision appealable to the Commissioners.

... speedier dismissal of trivial and vexatious claims ...

Some employers recommended changes to make it easier to dismiss trivial claims at an early stage. They felt that under the existing system all claims get investigated regardless of their merit. A number of human rights officers from two different locations shared this view. Other presenters wanted to see a system that could dismiss cases without merit quickly, but without blocking access to a hearing where appropriate.

... a strong Human Rights Commission ...

A number of representatives of gay and lesbian groups favoured a strong Human Rights Commission that could speak out for marginalized groups. They expressed the concern that members of their community are vulnerable, particularly in small towns, where they may not feel free to identify themselves as gay or lesbian because of fear of backlash and retaliation. They pointed out that the gay and lesbian community is overwhelmed by a number of crises, such as AIDS and homophobia, and needs a strong Commission to play a leadership role in defending their rights.

... choice ...

Whether advocacy services are provided via a community human rights centre or via the Human Rights Commission, the great majority of people felt that the individual should have the right to bypass those services and go directly to a hearing, if she or he so wishes.

The point was strongly made: people want to avoid the present monopoly in which people have no choice at all but must hand over all power to the Commission to decide what to do with a claim. This monopoly has created enormous dissatisfaction, bitterness, and anger. People want it to end.

Choice is particularly important because people's needs vary so much. An immigrant who speaks neither English or French or a person from a culture other than the predominant one, a person with a hearing impairment, a woman experiencing sexual harassment, Aboriginal people wishing a non-adversarial approach all have different needs. There should be flexibility to accommodate and respect those different needs.

In very clear terms, the Task Force was told that a new system must be open, must give people options, and, especially, must give people the right to have their claim heard.

... discovery process ...

Another point of widespread agreement was that each party to a rights claim should be required to provide all relevant information and documents to the other. This process, called a "discovery" process, is required in civil cases. People felt that a similar requirement in human rights cases would help speed the process up and provide more open communication early on. Years sometimes go by under the present human rights system, with human rights officers trying to gather evidence and bring about settlement. People felt that a mandatory discovery requirement would not only help bring forward evidence more quickly and effectively, but also increase the chances of parties settling, since each side would have a better understanding of the other side's case.

... *hearing body* ...

The Task Force heard many suggestions concerning who should hear claims. Some people said they wanted claims to be heard by courts similar to small claims courts. Most people said the hearing body should be a special tribunal with expertise in human rights. The most frequently stressed point was that claimants should have a hearing before a qualified and respected adjudicator.

... *streamlined process* ...

People called for a streamlined process that would be simple and clear for those claiming their rights and for those responsible for complying with the *Code*. People should be able to move smoothly through the system and know what to expect at each stage.

... *informal process* ...

The hearing process should be informal and non-legalistic, said many people. It should focus on finding out whether there has been discrimination and how to overcome it, instead of using an adversarial, legalistic approach.

... *criminal sanctions* ...

One group recommended making racism a crime and a civil offence. Strong penalties, such as fines and jail terms, would show the seriousness with which racism is treated and provide a deterrent. Others felt criminal sanctions should be used only when a decision of an Equality Rights Tribunal is not obeyed, since the criminal courts do not have the necessary expertise to deal with substantive human rights issues.

... *access to courts* ...

Some people recommended that rights claimants be allowed to take their case directly to the courts. This would give people another way of pursuing their claim and help prevent backlog. Others thought going to the courts would have a negative effect, since the courts do not have a good understanding of human rights, are slow, and are available only to people with money for a lawyer.

... internal workplace system ...

An employers' organization, the Institute for Equality and Employment, recommended that employers be required to have an internal claim process and that rights claims first be dealt with through this system. A person would file a claim under the *Code* only if this internal process failed.

... labour relations system ...

Some employers, unions, and other groups called for a system similar to the labour relations system. First, a speedy effort should be made by a human rights officer to settle the claim; if that fails, an employment claim should be heard by a three-person board made up of a representative chosen by the claimant, a representative chosen by the employer, and a third person chosen by these two representatives.

... regional tribunals ...

Some groups voiced a strong preference for regional tribunals to hear rights claims. It was important, they said, that the human rights enforcement system be locally accessible and sensitive to regional realities. A Toronto-based tribunal would not, in their view, be appropriate.

... coordination of equality bodies ...

Many representatives of both equality seeking groups and employers and service providers recommended that the human rights hearing system be coordinated with other equity systems. A number of people suggested that a tribunal be set up to handle human rights, employment equity, and pay equity cases. Others expressed concern that this system might bring about more backlog of cases and that the human rights focus might be weakened.

... interim orders ...

A number of groups and individuals spoke of the need to provide for immediate, interim orders in urgent situations while waiting for a full hearing, for example when a person is about to be evicted, when a person has a life-threatening illness, or when extremists are about to hold a racist rally.

... *stronger remedies* ...

Groups and individuals called for stronger, more effective remedies and for the present $10,000 limit on awards for mental suffering to be removed. They asked for a system of monitoring to ensure that human rights decisions are implemented promptly and accomplish what was intended.

... *third-party claims* ...

Many recommended that the *Code* allow community groups and individuals to make third-party claims, particularly when systemic discrimination is involved. Some employers disagreed, saying that community groups should be able to provide support to claimants, but not initiate claims.

... *systemic discrimination* ...

A frequent recommendation was to focus much more attention on overcoming systemic discrimination. Significant progress toward equality has not been, and will not be, made through taking the same kinds of individual claims over and over again, many equality seeking groups said. They felt that cases challenging widespread patterns of discrimination should be initiated by community groups or the Commission. However, some employers recommended that systemic discrimination be dealt with by education, not by enforcement, since many employers are not aware of systemic discrimination.

... *independence of the Commission* ...

The Commission should be completely independent, a number of people said. Some suggested that the Commission should report to the legislature rather than only to a particular government ministry. Others were concerned to ensure that such independence does not mean there will be no minister to speak for the Commission in Cabinet. The Commission itself spoke strongly of the need for the Commission to have independent status and be free of any possibility of political interference.

... *proactive role of the Commission* ...

Members of equality seeking groups recommended that the Commission's role be one of proactive human rights advocacy in the public interest. The Commission should play an energetic strategic role by addressing major issues of systemic discrimination. It should also work in closer partnership with community groups. For example, the Commission should make use of grass-roots community groups in designing and carrying out education initiatives. The initiatives would be not only more effective, but also more cost effective.

... naming of Commissioners ...

The way members of the Human Rights Commission are named should be much more community based, said many individuals and groups. Clear qualifications should be agreed upon, and Commissioners should be chosen from a list put forward by equality seeking groups.

... support for present system ...

While the Task Force heard widespread criticism and dissatisfaction with the present human rights system, some spoke in favour of it. For example, the Ontario Hospital Association and the Toronto Board of Trade both wished the current system to be maintained, but with some improvements. It spoke of the high percentage of cases the Commission settles as evidence in support of the present system and advocated that the role of the Commission to decide whether or not a case gets a hearing be continued.

... abolition of present system ...

One oral submission from the Freedom Party of Canada recommended that the present system be abolished and that human rights cases go directly to the courts. In their view, only rights claims against government should go forward.

VI. OVERVIEW OF TASK FORCE PRINCIPLES

In consultation with the Advisory Committee, the Task Force adoted the folllowing principles to guide it during its deliberations and in assessing the strengths and weaknesses of any models considered.

- The system should be geared to promote equality and overcome discrimination for disempowered groups.
- The system should be capable of achieving significant results to overcome the systemic discrimination which has been practised against certain individuals and groups in Ontario because of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status and handicap.
- The system should be timely, accessible, equitable, effective and empowering to persons and groups who experience discrimination.
- The system should incorporate a focus on discrimination faced by groups and a procedure that makes enforcement accessible to them.
- The system should be accountable to people who experience discrimination. Regular monitoring and accountability mechanisms should be built into the system.
- The system should fairly consider the legitimate interests of those responsible for ensuring equality.
- The system should assist equality seeking groups to develop resources, expertise, and confidence to claim their rights.
- Claimants should have control over their cases.
- The system should provide quick access to a hearing.
- The system should have remedies which are monitored and enforced.
- The system should provide options and assist to the claimant to deal effectively with the many different kinds of discrimination (the different grounds of discrimination covered by the *Code*, as well as multiple discrimination; the different settings covered by the code; individual and systemic cases).

- Resources should be provided to assist people in obtaining their rights under the Code.
- The independence, expertise, credibility, representativeness and effectiveness of any agency should be ensured.
- The system should be based on, and should promote, the indivisibility of human rights and solidarity. It should promote unified, strategic planning and leadership by equality seeking groups to monitor and advance human rights in Ontario as a whole.
- The system should be coordinated with other existing or planned equity agencies. However, the system must preserve the guarantees set out in the *Code* that it have primacy over all other legislation.

VII. FIRST NATIONS AND PEOPLES OF ABORIGINAL ANCESTRY

Introduction

In accordance with the Statement of Political Relationship between the Province of Ontario and the First Nations in Ontario, the Minister of Citizenship asked the Task Force to consult separately with First Nations in Ontario. The Task Force contacted the Chiefs of Ontario to jointly determine how the consultation would occur. It was determined that, in light of its expertise and its recent consideration of the Ontario Human Rights Commission, the Ontario Native Council on Justice was in the best position to coordinate a response. A meeting took place in May, where representatives of the First Nations and people of Aboriginal ancestry met both on their own and with the Task Force.[2]

The Chiefs of Ontario, through the Ontario Native Council on Justice and several Aboriginal organizations that appeared at public meetings, all made it clear that the present human rights enforcement system, which was not developed by the First Nations, has been woefully inadequate in preventing intentional and systemic violation of the human rights of Aboriginal people.[3]

The Ontario Native Council on Justice stressed that the meeting with the Task Force could not be regarded as a proper consultation, and they noted the impossibility of developing a position on a new enforcement system within the Task Force's very short time frame. The Council stated that they had reservations about providing advice to a task force that had been established by the Ontario government without the initial involvement of the First Nations.

The Present System

In the meeting organized by the Ontario Native Council on Justice, the First Nations and the people of Aboriginal ancestry present identified a number of concerns, including

- the disempowering effect of the current Commission, which forces Aboriginal people to participate in a process that is not their own;
- the lack of access to the human rights process, given its low visibility and the lack of confidence in the system;
- the inability of the Commission to carry out its education mandate, given the isolation of many First Nations communities;

- the failure of the process to rectify overt racism experienced by people of the First Nations, for example when its people exercising fishing rights are criminalized by the justice system;
- the circulation in Ontario of hate-promoting literature directed at people of the First Nations;
- The scant representation of Aboriginal people in the present human rights system;
- the need for better enforcement to ensure that the spiritual and other rights of Aboriginal people in correctional institutions are protected;
- the need for the coordination of government services like that of the Commission and the Ombudsman's Office in the interest of cost efficiency;
- the greater effectiveness associated with allowing community groups to file systemic human rights claims as opposed to having individuals file claims;
- the need to examine the Community Council method of dispute resolution; and
- the fact that they had not yet developed a position as to whether the Ontario *Human Rights Code* should apply to the First Nations and people of Aboriginal origins or whether there should be a separate system developed under the control of First Nations and Aboriginal people.

Several Aboriginal persons and organizations also appeared before the Task Force at the public meetings. All expressed their concern about how the system has failed Aboriginal peoples. Moreover, the Task Force heard that the First Nations should devise an alternative process that would be more appropriate to their culture of resolving disputes in a non-adversarial manner.

Research

The Task Force reviewed a number of research materials and briefs prepared by First Nations people and people of Aboriginal ancestry and identified a number of issues that arise in considering human rights enforcement.

In August 1991, the Ontario Native Council on Justice released a report by Fiona Sampson, *An Analysis of the Relationship between First Nations and the Ontario Human Rights Commission.* This detailed report was very critical of the Human Rights Commission in its failure to serve the people of the First Nations.[4]

Another article, *Native Rights as Collective Rights: A Question of Self-Preservation* by Darlene M. Johnston challenges rights-thinkers to come to terms with the fact that collective and individual interests are not necessarily antagonistic.[5]

One of the most notable current debates in the area of human rights is the position by the Native Women's Association of Canada that First Nations women must be covered by the *Charter* and human rights legislation. In a brief to the Canadian Human Rights Commission, which is considering amendments to the federal human rights legislation, the Association has asked for several changes to be made to the *Act* to ensure that Aboriginal women are guaranteed appropriate protections under it. Aboriginal people with disabilities have similar concerns.[6]

The Ontario Native Council on Justice also released a report, *Native Alternative Dispute Resolution System: The Canadian Future in Light of the American Past*, which extensively reviewed and considered the various non-adjudicative methods for resolving disputes used by the Aboriginal communities in North America, as well as in other parts of the world.[7]

These documents have been helpful to the Task Force in many ways and they should be given consideration in the development of solutions to address the concerns of the First Nation's and people of Aboriginal ancestry.

The Task Force believes First Nations and people of Aboriginal ancestry need both time and resources to develop solutions that would effectively prevent the intentional and systemic discrimination that is widespread in Ontario society. Aboriginal women and Aboriginal people with disabilities who face different forms of discrimination must be an integral part of the process.[8]

RECOMMENDATION (1):

- **First Nations and people of Aboriginal ancestry should be supported by the Ontario government with resources and a respectful time frame to develop solutions that would effectively prevent the intentional and systemic discrimination which is widespread in Ontario society. Aboriginal women and Aboriginal people with disabilities who face different forms of discrimination must be an integral part of the process.**

The Task Force would like to thank the Office of Chief Gordon B. Peters for its assistance. We would especially like to thank the Ontario Native Council on Justice and its staff for their support in the organization of the Task Force's meeting with representatives of the First Nations.

VIII. OVERVIEW OF PROPOSED NEW HUMAN RIGHTS ENFORCEMENT PROCESS

The new human rights enforcement system proposed by the Task Force has three key components:

- An independent, community-based Equality Services Board which will assist people with human rights claims
- A revitalized Human Rights Commission (now called Human Rights Ontario) which will play a strategic, proactive role to overcome systemic discrimination
- An Equality Rights Tribunal to provide timely access to trained, full-time human rights adjudicators

Independence of New System

An Equality Rights Appointments Committee, composed of three persons, who are highly respected for their commitment to human rights, will be named by the Premier. This Committee will consult with interested individuals and groups and will seek out qualified candidates for the Equality Services Board, Human Rights Ontario and the Equality Rights Tribunal, as well as an Advisory Council to the Commission and a Tribunal Advisory Committee.

Clear descriptions of the responsibilities to be carried out and the qualifications needed for each position will be clearly outlined and made widely known.

The Appointments Committee will recommend to the Premier candidates to be appointed to these different positions.

Role of the Equality Services Board

Twelve members of the equality-seeking community will be appointed to this Board. The Board will establish, prioritize and monitor advocacy services for human rights claimants. In particular, it will establish Equality Rights Centres and allocate funding for development of expertise in the various grounds under the *Code*. The Equality Rights Centres will be located around the province. They will be places where claimants can go or call to obtain information about the *Code* provisions, how to file a claim, the Tribunal process, etc. In addition, claimants can go to these Centres for the services of an advocate who will assist in framing a claim and/or filing a claim. The Board will also fund existing community advocacy organizations to do intake and/or representation or to bring test cases.

Role of Human Rights Ontario

Human Rights Ontario will not have control over human rights claims. Claimants will be able to obtain community-based assistance at Equality Rights Centres and have their claim resolved or taken to a hearing, according to their wishes. The new role of Human Rights Ontario will be to promote equality on a broad scale by taking forward key systemic cases and by carrying out other proactive initiatives.

The Commission will have the power to adopt regulations in order to better achieve the purpose of the Code.

Human Rights Ontario will have a Chief Commissioner and five full-time Commissioners with specific mandates in the following areas: Policy and Research; Proactive Systemic Initiatives; Compliance Services; Education; and Advocacy Services.

The Commissioners will have staff to carry out research, prepare systemic cases, plan and develop educational initiatives, etc.

... Commissioner for Policy and Research...

This Commissioner will be responsible for developing policy and guidelines and recommending where appropriate regulations for the proactive enforcement of the *Code*.

... Commissioner for Proactive Systemic Initiatives ...

This Commissioner will examine and inquire into systemic issues of discrimination throughout the Province including laws, policies and practices of the Provincial Government. It will make public reports and will make recommendations for change in such practices. Where necessary the Commissioner will initiate systemic claims before the Tribunal.

... Commissioner for Compliance Services ...

This Commissioner will ensure the provision of information to those responsible for ensuring equality concerning methods to ensure compliance with the *Code*. This Commissioner will have demonstrated a background and expertise in responsible compliance with the *Code*. A Compliance Services Unit will provide these consumers with a place to which they can direct themselves for information on the human rights system.

... Commissioner for Education ...

This Commissioner will be responsible for public education concerning the requirements of the *Code* and the necessary measures required to ensure compliance. It will serve the entire community, developing partnership relationships with both the claimant communities and those responsible for ensuring equality to promote proactive compliance with the *Code*. It will also provide grants to these communities to carry on their own initiatives.

Role of New Equality Rights Tribunal

The Task Force proposes a permanent tribunal to provide access and prompt decisions to those consumers not able to resolve their human rights claims by alternate means.

Individuals, groups and, indeed, Human Rights Ontario regarding systemic matters, will bring claims forward to the Equality Rights Tribunal. This Tribunal will be headed by a Chair responsible for overseeing its functioning and administration. Reporting to the Chair will be a Registrar, a Director, Resource and Training and four Associate Chairs responsible respectively, for Employment Equity, Pay Equity, Human Rights and, the Mediation Section. Lastly, there will be a panel of adjudicators, known as Vice-Chairs, from which the Registrar and Associate Chairs could assign adjudicators to claims.

Claim Resolution Process

... obtaining information on claim process ...

Appendix 3-3 sets out the ways in which potential claimants can obtain information on: how a claim is processed or, the way in which the Tribunal functions or the provisions of the *Code* from

- community groups and equality seeking groups,
- Equality Rights Centre,

- Lawyers and lay advocates, or the
- Office of the Registrar.

... intake - filing claims ...

With the information obtained, the individual or group will decide whether a claim should be filed. Claims are filed in the Office of the Registrar. Claims could be mailed or faxed or otherwise communicated to the Tribunal.

... preliminary screening of claims ...

The Associate Chair will advise claimants when their claims were clearly outside the jurisdiction of the *Code*. If a claimant did not accept this advice, the Registrar will schedule a brief initial hearing before a Vice-Chair to decide this issue.

... assignment of Tribunal Officer ...

Normally, the first step will be the assigning of a Tribunal Officer to the claim by the Registrar. The Tribunal Officer will contact the parties to explain the Tribunal process and ensure that this process was understood. The Tribunal Officer will make the parties aware of the two options open to them: mediation and adjudication. Parties will be asked if they had considered settlement options and whether they are interested in using the services of the Mediation Section. With respect to adjudication, the Tribunal Officer assigned to the claim will proceed to ensure that it was ready for hearing. This may involve ensuring that disclosure requirements have been complied with, advising the Registrar to schedule an initial hearing, or supervising developing an agreed statement of facts where possible.

... mediation ...

Where the parties were agreed to attempt mediation, the Tribunal Officer will refer them to an assigned Mediator in the Mediation Section. Mediation may either prove to be successful or unsuccessful. Where it is successful, the only issue which arises is compliance with the terms of the mediated settlement. Alternatively, a Mediator or one of the parties may conclude that the attempt at mediation should be terminated. If so, the claim is referred back to the original Tribunal Officer.

... *initial hearing*

A Vice-Chair will preside at the Initial Hearing and could do the following:

- uphold or overturn the Associate Chair's decision to dismiss the claim because it was outside the jurisdiction of the *Code*,
- make interim orders,
- order further disclosure,
- order a Tribunal Officer to investigate the claim, or actually
- render a final decision where appropriate.

The Vice-Chair will be able to use the initial hearing to ensure that the evidence necessary to adjudicate will be available by the time of the full hearing. Vice-Chairs will, moreover, control Tribunal resources by determining when Tribunal Officers investigate and the depth of the investigations.

... *full hearing* ...

To avoid unnecessary duplication of effort, the same Vice-Chair will preside over the full Hearing of the claim. It will be held at a date set by the Registrar, once the Tribunal Officer ensured that any Vice-Chair orders at the Initial Hearing were complied with (i.e. disclosure, investigation, etc.) The Vice-Chair will be mandated to adjudicate the claim on the real merits and order effective remedies where the claim was upheld.

... *enforcement* ...

The Tribunal Officer will assist to ensure the Tribunal's order was complied with. The civil courts could also be used to ensure compliance.

... *reconsideration* ...

Reconsideration of a decision may occur in two ways:

- a party in disagreement with the Vice-Chair's decision may request reconsideration and the Tribunal agrees to the request, or

- the tribunal could seize the initiative to reconsider one or several conflicting decisions.

Given that its decisions are normally final, it must be emphasized that the Tribunal will exercise this option infrequently. Moreover, it will decide what form reconsideration will take (i.e. new hearing or written submissions).

... narrow review by courts and by Ombudsman ...

The decision of the Tribunal is final. A privative clause will ensure that the only alternative to complying with a Vice-Chair's order, after the reconsideration option has been exhausted, is a narrow resort to the Ontario Court (General Division) where a decision is felt to be "patently unreasonable" or a claim to the Ombudsman.

IX. ENSURING THE INDEPENDENCE AND COMPETENCE OF THE NEW ENFORCEMENT SYSTEM

Rebuilding Confidence in the System

The independence of the proposed new system must be ensured so that it can regain public confidence and trust, and be an effective defender of human rights. This system will include three bodies:

- a restructured Human Rights Commission, "Human Rights Ontario,"
- an Equality Services Board operating Equality Rights Centres, and
- a new Equality Rights Tribunal.

In order to increase the independence of these bodies, an Equality Rights Appointments Committee will be set up to recommend names of qualified people to fill the key senior positions. Strong community involvement in the development, monitoring, and evaluation of these bodies will be a key part of ensuring the system's independence and effectiveness.

The Equality Rights Appointments Committee - Ensuring Effective Appointments

The Task Force believes that the appointment of people with a proven track record of commitment to and expertise in human rights and a sense of integrity and independent thinking is probably the most important factor in establishing independence. The Task Force also believes that safeguards should be built in to protect the integrity of the human rights appointment process.

Appointments should be protected from political influence for a number of reasons. Criticism has been expressed at different times that governments across Canada have appointed people to Human Rights Commissions who lacked qualifications. The Government itself is the biggest employer and service provider in the province and the single largest respondent before the Commission. In addition, governments are subject to pressure from powerful groups in society who may prefer a less effective Commission. Governments, therefore, undergo a conflict of interest when they appoint members of a Commission who are then supposed to be watchdogs over the Government.

In recent years, human rights appointments in Ontario have tended to focus on genuine human rights qualifications, and a welcome, more open, democratic process for all government appointments has been put in place. However, the Task Force believes a more formal, independent, and specialized process should be specified to ensure the integrity and competence of key appointments in the human rights enforcement system.

First, clear qualifications should be set together with a clear description of the responsibilities to be carried out. The International Covenant on Civil and Political Rights specifies that people named to the Human Rights Committee should have "demonstrated expertise in human rights." The *Quebec Charter of Human Rights and Freedoms*[9] requires people deciding human rights cases to have "notable experience and expertise in, sensitivity to, and interest for matters of human rights and freedoms."[10]

Second, a more independent appointment process should be put in place. Precedents exist that were considered by the Task Force.

The recently abolished Court Challenges Program had an appointment process that operated at arm's length from government, which protected its integrity and competence. The federal government gave an independent agency (the Human Rights Centre of the University of Ottawa) the mandate of naming the Equality Rights Panel and the Language Rights Panel. These panels decided which cases should be funded as test cases on equality rights and language rights under the Constitution. The appointment process used for the Court Challenges Program was strongly endorsed by equality seeking and language minority groups as fair and effective.

Another example of an independent appointment process for naming a body dealing with the rights of a disempowered group was the naming of the Commission on Aboriginal Rights. In order that this Commission would have independence and credibility, the Prime Minister asked former Chief Justice Brian Dickson to consult with First Nations groups and recommend to him the names of who should serve on the Commission.

In the case of the Court Challenges Program and the Commission on Aboriginal Rights, the federal government endorsed the appointments submitted.

The appointment processes used for the Equality Rights Panel, the Language Rights Panel, and the Commission on Aboriginal Rights were adopted to ensure independence and integrity for protecting groups whose rights have been consistently violated. They are reflective of true democracy.

For this reason, the Task Force proposes that a new system be established for the appointment of key persons in the new enforcement system - a system similar to that successfully used for several years by the Ontario government to appoint provincial court judges.

For the choice of provincial judges, the Attorney General named the Judicial Appointments Committee to recruit, consider, and recommend to the Attorney General appropriate candidates to be appointed. The Committee is composed of Ontario citizens from a variety of backgrounds and perspectives. Their mandate is to seek out qualified people who will not only bring expertise, but also reflect the diversity of Ontario's population and geography. To date, the Attorney General's appointments all have been candidates the Committee recommended.

The Task Force believes that the establishment of an Equality Rights Appointments Committee will provide the necessary measure of public accountability, openness, and community involvement in the appointments process so as to ensure confidence and effectiveness in the system.

The Committee will be composed of a Chair and two members named by the Premier who should be reflective of Ontario's regional diversity. Members should have a demonstrated commitment to and expertise in the equality rights field. The term of the appointments will be three years. Committee members will be remunerated in the same manner as are the members of the Judicial Appointments Committee.

RECOMMENDATION (2):

- **An independent, three-person Equality Rights Appointments Committee, composed of persons highly respected for their human rights expertise and independence, will be named by the Premier in consultation with the equality seeking community, those responsible for ensuring equality, and the responsible Minister.**

- **The Appointments Committee will recommend to the Premier the names of persons to fill the key senior positions in the new human rights enforcement system:**

    - **Human Rights Ontario - the Chief Commissioner and the 5 Commissioners,**

    - **Equality Rights Tribunal - the Chair and the 3 Associate Chairs for Human Rights, Employment Equity, and Pay Equity, and**

    - **Equality Services Board - the Chair and the 12 members.**

- **The Committee will seek out qualified persons who will not only bring expertise, but also reflect the diversity of Ontario's population and geography. The Committee will consult with the responsible Minister concerning the appropriate job descriptions for the positions and ensure that broad outreach measures are taken to ensure a diverse candidate pool.**

- **The Committee will recommend to the Premier the appropriate candidates, and, should the Premier decide not to appoint any recommended person, the Premier will be required to notify the Committee of the reasons for that decision.**

Independent Status for Human Rights Bodies

In the view of the Task Force, independent status must be guaranteed for the new human rights bodies it is proposing.

At present, the Human Rights Commission does not enjoy independent status. It is classed as a Schedule I Agency with an Executive Director who is accountable to the Deputy Minister of Citizenship on various major financial and administrative matters.

During the consultation process, the Human Rights Commission emphasized the necessity of having independent status so as to be free from any possibility of political interference and administrative obstacles. The Commission informed the Task Force of problems caused by its lack of independence. For example, the Commission does not have control over where its offices are located and cannot even ensure that these offices are accessible. In another situation, the Commission was delayed in publishing certain material while waiting for administrative approval through the government system.

This lack of independence is not acceptable. The new Commission should be given a truly independent status without delay. The Equality Rights Tribunal and the Equality Services Board must also have independent status.

The Task Force considered whether the new Commission and the other human rights bodies it has proposed should report directly to the Ontario legislature, as does the Ombudsman, or to the legislature through the Minister of Citizenship.

The Task Force also gave consideration to the idea of a particular Minister being named Minister of Equality Rights, who would have responsibility for the whole area of equality rights. This option is discussed as a future possibility in Section XXI.

Because government has a key role to play in advancing and implementing human rights, the Task Force concluded that the best option was for the Commission to have a fully independent status and to report to the legislature through a designated Minister.

The Ontario government is currently in the process of revising the accountability structure for the agencies it funds. A new Schedule IV is being developed by Management Board of Cabinet for agencies that require, due to the nature of their responsibilities,

- independence from the Government with respect to policy making and administrative support,
- public accountability for their funding and overall operations, and

- protection for their unionized and non-unionized staff by inclusion of these staff in the *Public Service Act*[11] and the *Crown Employees Collective Bargaining Act*[12].

The Task Force understands that a further schedule is being developed to ensure the same independence and protection for Tribunals that are currently excluded from collective bargaining rights.

The Task Force was also mindful of the need to ensure that any new structures it recommends do not affect the collective bargaining and employment protections of the current staff of the Commission.

RECOMMENDATION (3):

- **The new Commission, "Human Rights Ontario," the Equality Rights Tribunal, and the Equality Services Board will have full independence. Human Rights Ontario and the Equality Rights Tribunal will report to the legislature through a designated Minister. The Equality Services Board will report to Human Rights Ontario through its Commissioner for Advocacy Services.**

- **The Government's new accountability framework for agencies it funds will be flexible enough to permit Human Rights Ontario, the Equality Rights Tribunal, and the Equality Services Board to be included in a Schedule that guarantees**

    - **their full independence from the Government with respect to their policy-making and administrative support,**

    - **their public accountability for their funding and overall operations, and**

    - **protection for their staff (unionized and non-unionized) by inclusion of these staff in the *Public Service Act* and the *Crown Employees Collective Bargaining Act*.**

X. *ACHIEVING THE CODE'S PURPOSE*

Human rights legislation was first passed in Ontario in 1962 because of overwhelming evidence of racial and religious discrimination. The *Code* was expanded over the years to cover additional grounds - sex, disability, sexual orientation, etc. - as serious problems of discrimination against each particular group were documented and brought to public attention.

People of colour, people with disabilities, people on public assistance, women, and other minority groups lack social, legal, political, and economic power. It is precisely because of this imbalance of power that the *Code* was passed with the specific purpose of breaking down discriminatory barriers and bringing about the full and equal participation of these groups in all aspects of society.

It is contradictory that, while the *Code* exists, *because* of recognized, widespread discrimination against particular groups, it is worded as if the normal operations of society were fair and non-discriminatory. This is particularly true of the Preamble.

The Preamble to the *Code* guides the way the *Code* is to be interpreted and enforced. It is therefore important that the Preamble be up to date and properly reflect developments in human rights understanding and enforcement.

In the view of the Task Force, the Preamble fails to do this. It is out of date and incomplete. In particular, it does not reflect rulings by the Supreme Court on the near constitutional nature of the *Code* or rulings on the positive action that must be taken to overcome the historic and present discrimination experienced by particular groups.

The Preamble to the *Ontario Human Rights Code* makes the following two basic points:

- it is public policy in Ontario to recognize the dignity and worth of every person and
- the aim of the *Ontario Human Rights Code* is to create a climate of understanding and mutual respect for the dignity and worth of each person.

While these principles are important, they are also quite vague. The words ring more like worthy hopes than a purposive statement of practical intent to guide the enforcement of the *Code*.

The Task Force believes that effective enforcement of the *Code* requires a clear statement in the Preamble of the *Code*'s purpose. The *Code*'s Preamble should be revised to

- reflect the Supreme Court of Canada's rulings of the near constitutional nature of the rights to be enforced and
- clarify the *Code*'s purpose of providing a practical and powerful proactive tool to enforce human rights.

Code Has Near Constitutional Status

The Supreme Court of Canada has said many times that human rights laws are special laws that must be treated with great seriousness and implemented effectively.

> ... the Act, we say, is not aimed at determining fault or punishing conduct. It is remedial. Its aim is to identify and eliminate discrimination. If this is to be done, then the remedies must be effective, consistent with the "almost constitutional" nature of the rights protected.[13]
>
> [The adjudicator must be able] to strike at the heart of the problem, to prevent its reoccurrence to require that steps be taken to enhance the work environment.[14]
>
> When the subject matter of the law is said to be the comprehensive statement of the 'human rights' of the people living in that jurisdiction, then there is no doubt in my mind that the people of that jurisdiction have through their legislature clearly indicated that they consider that law, and the values it endeavours to buttress and protect, are, save their constitutional laws, more important than all others.[15]

Yet it is all too evident in Ontario that human rights laws are, in fact, being treated less seriously than other laws and are being weakly and inadequately implemented.

Proper justice is denied in the following ways:

- the unconscionable delays in handling claims,
- the denial of a hearing to all but the smallest number of claimants,
- the disempowerment of those who try to claim their rights under the *Code*, and
- an enforcement approach that continues to be out-of-date and out-of-touch with present day realities.

The Task Force believes that the near constitutional importance of the *Human Rights Code* should be clearly stated in the Preamble so that human rights enforcement is guided accordingly.

RECOMMENDATION (4):

The Preamble of the *Code* should be amended as follows to incorporate the almost constitutional importance of the *Code*.

- **Whereas the *Code* is special legislation that has primacy over other laws in Ontario except the Constitution and whereas this special status requires all Ontarians, including the Government and those who enforce and interpret the *Code*, to treat it with special seriousness so as to achieve its near constitutional purpose ...**

Systemic Discrimination Requires Positive Action

The Preamble to the *Code* should explicitly recognize that systemic discrimination exists and that positive action must be taken to overcome the historic and present discrimination.

Positive, constructive action against discrimination has already been ruled necessary in dealing with some particular issues. For example:

- court decisions have quite clearly ruled that employers have a positive duty to take measures to ensure their workplace is free of sexual and racial harassment. Neutrality as a response by employers to the recognized problem of sexual harassment in the workplace is no longer acceptable.

  The Supreme Court of Canada, noting the systemic discrimination by protected groups, has ruled that equality rights carry with them a positive duty to overcome the historic and present discrimination experienced by certain groups in society so that members of these groups may achieve their right to equality.

  > ... the purpose of anti-discrimination legislation is the removal of unfair disadvantages which have been imposed on individuals or groups in society.[16]

- In the area of pay discrimination against women, the *Pay Equity Act* recognizes systemic gender discrimination in compensation and requires employers to take positive action to achieve pay equity.

- Under Employment Equity legislation and Contract Compliance rules (for example, City of Toronto Employment Equity Program, the federal government Contract Compliance regulations), employers are required to take positive action to overcome discrimination. Indifference or "business as usual" approaches can be perpetuation of traditional discrimination. If an employer does, in fact, have a workplace that is discrimination-free, then he or she will not need to take any positive action.

It would be more consistent and equitable if the positive requirement to overcome discrimination clearly applied to all groups and all areas covered by the *Code*.

The Task Force believes that an approach based on the assumption that normal, typical practices are fair will not achieve the purpose of the *Code*. The *Code* places large amounts of resources into proving whether or not a particular individual was discriminated against, and feeds into an adversarial climate where a respondent feels defensive and obliged to spend time and money to defeat an allegation of wrongdoing. The Task Force believes this approach is unproductive.

The federal *Employment Equity Act* states that its purpose is to achieve equality in the workplace and, "in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, Aboriginal peoples, persons with disabilities and persons who are, because of their race or colour, in a visible minority in Canada by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences."[17]

Accommodating differences means that the right to be equal may require different measures to achieve equality.

The Task Force believes the Preamble should be amended to require equality rights in the *Code* to be enforced in a more positive and remedial manner, in keeping with the rulings of the Supreme Court of Canada, in keeping with the positive obligation to achieve equality rights placed on all governments by section 15 of the *Canadian Charter of Rights and Freedoms*, and in keeping with the positive obligations to advance human rights in international human rights covenants that Canada has ratified.

RECOMMENDATION (5):

The Preamble to the *Code* should be amended to include the following:

- **Whereas historic systemic discrimination has been practised against members of certain groups in Ontario because of their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, disability or receipt of public assistance;**
- **Whereas at different times many of these groups have been denied the basic rights of citizens, such as the right to vote, the right to enter professions, the right to pursue an education, the right to purchase property, the right to immigrate, the right to rent accommodation, the right to obtain employment, the right to enter public places;**

- Whereas these groups continue to experience discrimination, stereotyping and harassment *and*/or are disadvantaged through not being included or represented in a fair and equal way in the institutions, opportunities and activities of Ontario society;

- Whereas the *Ontario Human Rights Code* is positive remedial legislation enacted to achieve equality rights for members of these groups;

- Whereas right to equal treatment requires that positive measures be undertaken;

- Whereas persons involved in the provision of services, accommodation, employment, contracts, unions and vocational associations have a responsibility to take measures to overcome discrimination in these areas and provide these opportunities in a manner that accommodates differences and is inclusive and respectful to all groups who make up Ontario;

- Whereas the Province of Ontario and the Government of Canada have ratified and are bound by International Human Rights Covenants ...

XI. PROVIDING SUPPORT FOR CLAIMANTS

Claimants need Advocacy Services

Advocacy services must be provided for people with human rights claims for a number of reasons.

First, it has been public policy for many years that human rights claimants should receive publicly funded assistance to bring their claims forward. This was evident in the creation of the Ontario Human Rights Commission with its mandate to investigate and try to settle claims and at times assign lawyers to argue claims before Boards of Inquiry.

The current method for providing assistance to claimants lets the Commission decide which claims should go to a hearing and be represented by a lawyer. This system has not worked well and must be changed. Yet it is important that the good and essential features of the system are not lost in the reform process.

The public commitment to funding representation for human rights claims is crucial and should be continued. It represents an important statement by Ontarians that discrimination is a societal problem requiring publicly funded solutions.

Second, many if not most people who make a human rights claim need assistance and support. Often they feel hurt, angry, confused and afraid. Without assistance, they cannot enforce their rights. Opening up access to a hearing may be a hollow achievement if support and advocacy are not provided.

In the context of human rights claims, the principal job of the advocate is twofold: provide the individual with information about the system, the *Code* and the law in general, so that the individual can make informed choices; and represent the claimant throughout the claim process.[18]

The kind of advocacy services needed will depend on the characteristics of the individual, the nature of the claim, and the complexity of the system. More services will be needed where there are, for example, language, cultural, or disability-related barriers to communication, a history of unredressed discrimination, and an overtaxed or complex claims system.[19]

A third reason why advocacy services are essential is that, without them, the hearing process for rights claims at the Equality Rights Tribunal will have difficulty functioning efficiently and fairly. While staff of the new Tribunal can and should provide information about how their system works, it would be wrong to suggest that they can fill an advocate role. In order for claims to proceed efficiently at the Tribunal, claimants must have access to trained, publicly funded advocacy services.

Properly trained advocates will not only help prepare claims to go before a hearing, but will also assist in resolving claims through various means of mediation. They will refer people to other services if the issue they raise does not come under the *Code*.

Lay advocates now currently work throughout the community legal clinic system providing advocacy services before a variety of administrative tribunals. However, the clinic system has not to date developed any substantial expertise in lay advocacy for human rights claimants.

The Equality Rights Centres will be primarily staffed by lay advocates and some lawyers. The Task Force believes that it is necessary for training courses to be established to develop expertise and certification as an equality rights lay advocate. This training and certification could be provided through the community college system which has colleges throughout Ontario.

A precedent exists in the pay equity context for using the community college system to deliver training services. The Pay Equity Commission developed an extensive manual on techniques for developing pay equity plans and provided them free of charge to the Community colleges who then gave courses around the province based on the manual.

The Commissioners for Advocacy Services and Education could cooperate in preparing such training materials and establishing a training and certification system.

Lay advocates who receive certification from such courses could then work in Equality Rights Centres, as well as in the centres of special expertise and the community groups.

Advocacy Services should be Community-Based

The Task Force believes that community-based advocacy centres will provide better, more accessible and more supportive assistance to people with claims of discrimination. Such centres will have a clear, unambiguous role, will be user friendly and accountable to those they serve.

Intake staff, lay advocates and lawyers, who have a strong human rights background and commitment, will provide information and help. The *Code* should be amended to clearly protect the confidentiality of the work carried out by community human rights staff. For example, the *Code* might state:

> Any communication between a human rights claimant and a community human rights employee, employed at an agency funded by the Equality Services Board and assisting that person with her or his claim, shall be treated as confidential.

In considering how advocacy services could best be delivered, the Task Force applied the following principles:

... community participation and regional access ...

Many different groups experience discrimination and need advocacy services. Their expertise and involvement are essential.

... independence ...

People using advocacy services need to have confidence that the service is committed to serving them and does not have conflicting interests.

... consumer orientation ...

A consumer controlled service is better able to respond quickly and sensitively to consumer needs and to reflect regional issues and concerns.

... integral part of system ...

Advocacy services must be an integral and permanent part of the human rights enforcement system.

... accountability ...

Advocacy services are crucial to the new enforcement system and provision of such services must be publicly accountable.

... maintenance and quality of service must be ensured ...

In order to ensure consistent, high quality delivery of advocacy services, the services must comply with public standards.

... integration with other equity advocacy services ...

Advocacy services for human rights claims should be provided in a way that allows for other equality issues such as employment equity and pay equity, to be included, if considered appropriate.

Need for Integrated Overall Enforcement System

While advocacy services should have strong community input and be independent from government, they would benefit by being integrated into an overall enforcement system as this would strengthen accountability, funding and province-wide standards.

The Task Force considered the following possible ways to provide advocacy services, but found each has certain drawbacks:

Options Rejected

... inclusion within existing clinic system ...

If the Centres were run under Ontario's Clinic Funding System, their independence and their identity as an integral part of the human rights enforcement system would be lost, as the clinic system has to respond to a variety of urgent cases involving different laws. The clinic system has not to date given any priority to representation of human rights claims. The Task Force believes, however, that the experience and expertise of community legal clinics, funded by the Clinic Funding System, could be very helpful. Strategic partnerships could be entered into with these community legal clinics and they could possibly provide assistance to human claimants in remote areas or where there is an overload of work.

... individual centres with community boards ...

The Task Force was attracted by the possibility of individual independent centres with their own community Boards, reflective of their region, and accountable to a central body which sets standards of operation and quality. While such centres would have the advantage of being closely connected with their community, they would not be able to meet overall provincial priorities and would be particularly vulnerable to cut-backs by governments.

... operated directly by the Commission ...

Another option would be to assign direct all responsibility for advocacy services to a specific Human Rights Commissioner who would be advised by a Board representing the different regions of the province. The Commissioner would be required to seek the advice of the Board. This option could once more, however, lead to conflict in the Commission's role. Lay advocates directly employed by the Commission, might take a position for a claimant which conflicted with a position taken by the Commission, acting in the public interest in the same case.

Need for an Equality Services Board

The Task Force therefore recommends the establishment of an independent provincial Equality Services Board, similar to the Ontario Training and Adjustment Board (OTAB).

The Board would have the operational responsibility for planning, coordinating and delivering the advocacy services needed by the claimant community in Ontario.

In order to coordinate its role in the overall enforcement system, the Board would report to the Commissioner for Advocacy Services and be funded by the Commission. The Board would be required effectively to seek the advice of the equality seeking communities within the regions of Ontario. This advice might be provided by setting up an advisory committee for each region or by another appropriate consultation process.

This structure will, in the view of the Task Force, provide the most advantages and the least disadvantages. It will draw the benefits of community involvement and control, in partnership with the Commission; it will establish a mechanism for Commission accountability for the overall provision of advocacy services; it will be strengthened by having a consistent, province-wide base.

Structure

The twelve part-time members and full-time Chair of the Board will reflect the claimant community (the people and groups whose equality rights are protected by the *Code*) and the regions of Ontario. There should be two from each of Ontario's six regions. A possible division for the six regions is the division used by the Ontario Advisory Council on Women's Issues namely Northwestern and Northeastern Ontario and four regions in Central and Southern Ontario. To ensure their independence, they will be appointed by the Equality Rights Appointment Committee. They will be required to have a strong background in human rights, community development and advocacy services.

Roles of the Commissioner and the Board

The Commissioner for Advocacy Services will be responsible to monitor the quality of service provided and, in particular, ensure that services are delivered in a fair, efficient, accessible and coordinated way to all parts of the province and for all grounds and issues covered by the *Code*.

The Commissioner will

- advocate for the necessary resources for the Equality Services Board to provide appropriate services to human rights claimants around the province and special funding for community groups to bring forward significant cases;
- set, monitor and evaluate the overall guidelines and standards for the delivery of equality services, including the Centres;
- work in partnership with the Equality Services Board and sit as an ex officio member on it;
- Have overall responsibility for establishing training services and certification for equality rights lay advocates through the community college system; and
- provide an annual report to the Commission Advisory Council on advocacy services provided to the community.

With the advice of equality seeking groups, the Board will:

- develop operational guidelines for the provision of advocacy services;
- set up advocacy services around the province in ways that best meet the needs of human rights claimants and best advance the equality rights of disadvantaged groups;
- determine priorities for advocacy services and assign monies to the six regions;
- set up and administer a Significant Case Fund to allow equality seeking groups to take forward important cases;
- assist equality seeking groups to meet on a regular basis so as to evaluate progress in human rights enforcement in the province and develop strategies and priorities;
- request and allocate funding for the advocacy services and other kinds of support provided to equality seeking groups;

- ensure proper training for equality rights lay advocates and persons who wish to become such advocates;
- provide a report each year to the Commissioner for Advocacy Services which will be included in the Commission's annual report to the Legislative Committee on Equality.

Services to be Provided by the Equality Services Board

... Equality Rights Centres ...

Equality Rights Centres across the province will play a major role in providing advice, assistance and advocacy to human rights claimants. They will have well-trained intake staff, lay advocates and lawyers who will be employed by the Board. They will assist claimants to resolve their claims in a way satisfactory to them. This might mean helping to bring about a settlement of the claim or preparing it for a hearing before a human rights adjudicator. Staff at the Centre will file claims with the Tribunal, gather evidence, interview witnesses, take statements, serve claims on respondents. They will represent claimants at hearings.

The Centres will endeavour to serve everyone with a claim under the *Code*, but will be able to prioritize their caseload depending on resources and the importance and complexity of the case. They will also assist people to find other services and resources. They will report regularly to the Board on their activities and, in particular, any difficulties they experience in fulfilling their mandate.

... development of specialized expertise ...

Some equality seeking groups have already developed centres of special expertise on equality rights. Examples are the Advocacy Resource Centre for the Handicapped, the Centre for Equality Rights in Accommodation, the Urban Alliance on Race Relations, the Women's Legal Education and Action Fund. These centres have an impressive track record in providing effective advocacy, research, resources, expertise, and training to advance the equality rights of the group they represent. They have provided a key function in the enforcement system for many years with minimum recognition or funding to recognize that role.

The Task Force believes it would be a strategic and productive use of resources to support existing, or develop new, centres of specialized expertise for each major area of discrimination covered by the *Code*. For example, there could be special centres of expertise on the following issues:

> disability; gender; race; lesbian and gay; age (discrimination against both youth and seniors); housing; record of offences.

Creativity and innovation should be used in developing and making use of this expertise. For example, computer technology would be a means of rapidly and efficiently communicating and disseminating information. Equality centres around the province could then readily access the special expertise, when needed.

A specialized centre might be free-standing or it might be a unit at one of the generic Equality Rights Centres or at a legal clinic or in an existing community organization.

The Task Force believes that specialized centres of expertise will help advance equality rights in a carefully planned, strategic manner. They will also help ensure that the different grounds covered by the *Code* are given attention and assistance.

For example, very few cases have gone forward in Ontario, or anywhere else in Canada, on the issue of discrimination against people with a record of offences. This kind of discrimination is prevalent and serious, but has been neglected because those affected have few resources to challenge it. Directing some resources to develop special expertise on this issue would assist well informed advocacy to implement this right.

The development of specialized expertise in different areas will:

- support effective advocacy to advance the rights of the particular groups by initiating important cases;

- develop expertise by carrying out research, collecting resource material, developing networks of experts, gathering statistics and data;

- promote awareness and understanding by informing members of the groups of their rights;

- promote compliance by preparing and disseminating (sometimes for a fee) high quality, up-to-date information to the general public and decision-makers (employers, service providers, governments, unions, etc.)

- carry out training programs and prepare and disseminate training materials; and

- act as a resource to the Equality Rights Centres, legal clinics, and community groups and assist them in preparing and arguing cases.

The centres of special expertise will be part of the overall delivery system of human rights services. The Equality Services Board will work with the particular affected group to develop them. Organizations that already play this role can apply to the Board for recognition and funding as a centre of expertise.

... funding community groups ...

The Task Force was told many community organizations already perform a lay advocate function for claimants.

Community advocacy groups who wish to provide advocacy services to human rights claimants will be able to apply to the Equality Services Board for funding to do so. The Board will consider such requests in the light of the needs of the overall system; the volume of claims in an area; special skills brought by a group; and cultural, geographic and disability-related barriers the group can help overcome.

By funding a community group - such as a group that works with homeless people or with refugees - the Board will be better able to reach out and provide service to groups who are particularly fearful or unaccustomed to approaching usual services. Funding a community group, when appropriate, will give the human rights system flexibility and variety in providing advocacy services. It will also mean the Board's resources will be used to maximum advantage. For example, where the volume of work does not justify setting up an Equality Rights Centre, an existing community group could receive funding to include human rights advocacy in the services it already provides. People in the area would then have direct access to a more locally-based service.

... other ways of providing advocacy services ...

Using its knowledge and imagination, the Board will use a variety of means to provide advocacy services in particular situations. It may, for example, enter into an agreement with a community legal clinic in an area where the small number of human rights claims and the limits on its resources make it inadvisable to open up its own centre. It may choose to provide advocacy services by having an advocate on duty at the Tribunal itself.

... Significant Case Fund ...

Another resource the Equality Services Board will provide is a Significant Case Fund. This Fund will allow equality seeking groups to initiate important test cases to advance the equality rights of groups protected by the *Code*. The Board will publicize, manage and distribute these funds. The purpose of the Fund will be to ensure that advocacy resources are used productively by targeting significant cases and by utilizing community expertise.

... funding meetings of equality seeking groups ...

Another important part of the Board's mandate will be to organize each year a meeting of equality seeking groups to review human rights progress to date and set the course for advocacy in the upcoming year. People from around the province, representing the various equality seeking groups covered by the *Code*, will meet and work together to decide strategies and priorities to advance human rights. In assessing what has been achieved in the previous year, the participants will review the work of the Human Rights Commission, the Equality Services Board and the Equality Rights Tribunal.

The meeting will be substantive, probably lasting two or three days. The Human Rights Commissioners will participate for part of it in order to share in discussions and benefit from broad-based community input.

The Equality Services Board will widely distribute throughout the province the report and recommendations of this meeting.

The Board will also organize and fund special meetings of equality seeking groups to share ideas and develop strategies on particular issues of concern to their mandate.

Board must be Responsive to Regional Concerns

The Board's structure of having two members from each of six regions in the province will be a key vehicle for building in regional access.

The Board will also be required to take measures to ensure it is responsive to regional concerns in its provision of advocacy services. The Board may wish to establish Regional Community Advisory Committees for this purpose, but the method for ensuring its accountability to regional issues should be left to the Board itself.

Standards

The Commissioner for Advocacy Services will set general overall public standards for advocacy services with specific standards for the centres, such as the following:

... general standards ...

- The purpose of the services is to help claimants express and act on their own wishes and become informed and exercise their equality rights.
- Local communities and community organizations should be enabled to provide their own advocacy services whenever possible.

- Aboriginal communities should be enabled to provide their own advocacy services whenever possible.

- Strategic partnerships should be entered into with other service providers which have related roles - for example community legal clinics, Legal Aid, community advocacy groups, advocates under the *Advocacy Act*.

... specific standards for centres ...

- A *Code* of Ethics will ensure that staff are respectful and welcoming to members of all the groups protected by the *Code*.

- A *Code* of Ethics will ensure strict standards of confidentiality are respected.

- The service will reflect a consumer oriented philosophy. People using the service will be asked to give their evaluation of the service. They will be invited to give comments and suggestions for improvement.

- Staff will be specially trained in the field of equality rights advocacy and the issues and concerns of the persons and groups protected by the *Code*; they will have sensitivity to racism and ethnic discrimination, sexism, homophobia, disability discrimination, classism, ageism, and other forms of prejudice.

- Particular attention will be paid to ensure claims from people who experience multiple discrimination are treated in an effective and holistic manner, for example, a claim from a woman of colour who has experienced discrimination as a woman and as a person of colour.

- Priority will be given to including among the staff,persons from the groups protected by the *Code* and persons who have themselves experienced discrimination.

- Advocacy services will be provided so as to be accessible to persons with disabilities, person who speak languages other than English or who have literacy barriers, persons who are poor, persons who are particularly afraid or vulnerable, such as refugees.

- Public information programs and strategies for community development will be integrated into the provision of advocacy services.

- Community-based mediation or alternative dispute resolution measures, based on clear human rights standards, will used when claimants so wish.

Options Should be Provided

The system recommended by the Task Force will provide claimants with a variety of ways to obtain assistance. For example, claimants could choose to:

- retain their own lay advocate or lawyer to represent them either with their own funds or through Legal Aid;
- seek assistance from a publicly funded Equality Rights Centre in their region;
- seek assistance from a community advocacy organization with which they are familiar, such as the Chinese Canadian National Council, the Canadian Jewish Congress;
- seek assistance from an existing community Legal Clinic; and
- represent themselves.

This need for options was strongly identified by the research prepared for the Task Force by the Inter-clinic Committee on Human Rights Law Reform.[20]

The variety of advocacy services will help overcome different cultural and geographic barriers and better meet claimants' needs. Imaginative and flexible approaches, as well as the use of modern communications technology, will help make advocacy services available in every part of the province. Clear mechanisms for setting standards and monitoring will help ensure the quality of the services provided.

Advantages of the New System to Provide Advocacy Services

- Accessibility of the claims procedure.
- Competent and creative legal advice will enable important equality issues to come forward and will discourage unfounded and inappropriate claims.
- Better prioritization of issues because of involvement of equality seeking groups in planning and monitoring the system.
- A more supportive environment for claimants, making the process more affirming and empowering.
- An important role for equality seeking groups to take forward significant cases which will have broad impact.

- Better ability to eliminate the backlog by the removal of unnecessary steps in the present process.
- More effective mediation by removing intermediaries and confusing roles.
- Development of special expertise in particular areas of discrimination, and the sharing of this expertise with everyone in the system.
- Built-in quality control mechanisms and accountability to users.
- Earlier identification of systemic issues by informed advocates.
- A fair and prompt hearing of all sides of claims.
- More appropriate and effective remedies.
- A more cost-effective and predictable environment for respondents.[21]

RECOMMENDATION (6):

- **A province-wide system of community based publicly funded advocacy services should be set up to assist human rights claimants.**
- **An independent Equality Services Board should be established which will have operational responsibility for planning, coordinating and delivering the advocacy services needed by the claimant community in Ontario.**
- **The advocacy services provided should include Equality Rights Centres around the province, special centres of expertise, partnerships with community and advocacy groups.**
- **The Board should establish a Significant Case Fund which will allow groups to initiate test cases to advance the equality rights of groups protected by the *Code*.**
- **The Board should report to the Commissioner for Advocacy Services. The Board should provide the Commission with an annual report to be included in the Commission's annual report to the Legislative Committee on Equality.**
- **The Commissioner for Advocacy Services should be overall accountable for the proper functioning of the claimant advocacy services system. The Commission should ensure that a significant portion of its budget each year is set aside for the necessary funding of claimant advocacy services.**

- **Training courses and a system of certification should be established through the Community College system for Equality Rights Lay Advocates who will be primarily responsible for the delivery of advocacy services to claimants.**

- **Any communication between a human rights claimant and a community human rights employee, employed at an agency funded by the Equality Services Board and assisting that person with her or his claim, shall be treated as confidential.**

- **Specialized expertise should be created or existing expertise funded for major areas of discrimination such as race, gender, disability, lesbian and gay, age, housing, record of offences.**

- **The Equality Services Board should be responsible for certifying and funding this expertise.**

XII. REVITALIZED HUMAN RIGHTS COMMISSION "HUMAN RIGHTS ONTARIO"

Introduction

The Task Force believes it is important to set the Ontario Human Rights Commission on a new course that will allow it to emerge from the seige it has been under and start to function as a revitalized new agency playing a central role in the new enforcement system. To this end, the Task Force is recommending major structural changes to the Commission's mandate and organization to allow it to act as the public conscience on the side of equality and against discrimination.

The Task Force recommends that the name of the Commission be changed to reflect this new path toward the positive advancement of human rights.

The Task Force believes the name "Human Rights Ontario," like Ombudsman Ontario, appropriately marks this new start and commitment.

Advisory Council

To help rebuild confidence in the Commission, the community at large should be involved in advising it on carrying out its many responsibilities. The Advisory Council should be closely and regularly consulted by Human Rights Ontario and should be provided with sufficient resources and information to enable it to play a valuable role.

The Council will be made up of people with proven and demonstrated leadership in the field of human rights. Council members will come from the different regions of Ontario and from the groups of people traditionally discriminated against as outlined in *Code*, as well as from leaders in providing equality in services, employment, and accommodation. They will be named using an appointment process acceptable to the community.

The Advisory Council will assist Human Rights Ontario in carrying out its mandate in a manner that builds community empowerment and respects the right of equality seeking groups to speak for and represent themselves. Council members will assist it to build links and to provide leadership to employers, to accommodation and service providers and others with responsibilities under the *Code*. By having Council members from around the province, Human Rights Ontario will be attuned to regional issues and concerns. Because Council members will have strong connections with their communities, the new Commission will be strengthened by their direct knowledge and expertise and be better able to respond to major concerns in the different areas of the province and among the different groups covered by the *Code*.

The Advisory Council will make sure Human Rights Ontario works in partnership with the community. It should prepare a report each year to be included in the Human Rights Ontario's Annual Report to the Legislature.

Relationship between Human Rights Ontario and Equality Seeking Groups

The new Commission and its Commissioners must be committed to empowering equality seeking groups to speak for and represent themselves. A number of equality seeking groups told the Task Force that they have experienced problems in the past in this regard. Part of the problem was caused by the procedures set out in the *Code* itself, but part of the problem was also caused by the narrow way the current Commission implemented those procedures. For example, an equality seeking group had to take the Commission to court because the Commission was refusing claim forms filled in by the group.[22] The court ruled that the Commission should accept such claims.

The Commission's past approach has left a legacy of anger in many equality seeking groups, who felt their expertise and knowledge was often disregarded by the Commission. Some of these groups are reluctant to support the rebuilding of a new Commission with a strong leadership role; they are suspicious that the new Commission might take advantage of these powers and not adequately empower equality seeking groups. The Task Force listened to these concerns.

An agency that defends human rights must be based on a philosophy of respect toward groups seeking equality. In addition, the evidence is quite clear that a large number major gains in the field of equality rights have been won through the hard work, skills, and expertise of equality seeking groups themselves. Landmark equality rights cases in Canada, both under human rights laws and under the *Charter* have been won by members of disadvantaged groups taking cases to tribunals and courts themselves.

In its brief to the Task Force, the Commission did, however, stress its support for moving away from the old, disempowering approach.

> The human rights enforcement system is experienced as disempowering by a significant portion of the equality-seeking community in this province. This is a fact which the Commission believes must be addressed by this review....[The system] is not in keeping with the valid demands of the equality-seeking community today for a process which is more fully respectful of the dignity of disadvantaged persons.[23]

The Task Force supports these comments and wishes to emphasize that, in its view, the new revitalized Commission must avoid falling into the old disempowering approach. Since Human Rights Ontario will no longer have carriage of complaints, one of the major structural reasons for the past, more paternalistic approach will be gone. It must encourage, support, and cooperate with the energy and expertise of equality seeking groups. Such an approach will, in fact, strengthen the new Commission, not weaken it. Where, for example, an equality seeking group has the expertise and desire to take forward important systemic cases, Human Rights Ontario should defer to, respect, and assist the group. It should not seek to compete with or duplicate the equality seeking group's role.

In areas where important initiatives are not being undertaken, Human Rights Ontario should take the lead in developing and pursuing effective strategies. In doing so, it should work with the affected group and be responsive to their views.

The new Commission's relationship with equality seeking groups must be one of openness, respect, and empowerment.

Relationship between Human Rights Ontario and Respondent Community

The new Commission must also be including committed to building a new relationship with the community responsible for ensuring equality - the employers and accommodation and service providers. The Task Force was told by many employers that they find the current Commission to be antagonistic and unsupportive. They are therefore reluctant to seek any compliance assistance from it. As with equality seeking groups, this relationship must be repaired.

Since Human Rights Ontario will no longer be handling individual complaints under the new system proposed by the Task Force, it will, in the view of the Task Force, be better able to relate to the respondent community in a proactive and constructive manner, focusing on working with that community to ensure that the broad patterns of discrimination are addressed. This community consists not only of large business but also of non-profit agencies, unions, and, at times, equality seeking groups themselves, all who may become respondents under the *Code*.

Although much effort must be directed to building links with this community, the Task Force recognizes that a tension will always exist in this relationship because of the Commission's law enforcement responsibility, which may require reporting on or filing claims against respondents. To assist in handling this tension, in the new system, a specific Commissioner for Compliance Services has the role of providing clear and helpful information to the respondent community on how to comply with the *Code*. In cooperation with the community's key organizations, this Commissioner will be able to find strategic ways to assist those responsible for ensuring equality in overcoming systemic discrimination so that individual claims will not arise.

The new Commission's approach should stress openness and partnership so long as there is effective compliance.

Mandate

The *Code* presently puts forward a broad mandate for the Commission to advance human rights by carrying out public education, monitoring government laws and policies, inquiring into major social problems of discrimination, and showing leadership in the community to bring about solutions. However, the Commission also currently has total responsibility under the *Code* for handling every human rights claim filed in the province.

As a result, the Commission, like other Human Rights Commissions across the country, has become little more than a claim processing unit. Energy and resources have gone to the endless task of trying to keep up with the volume of claims, work with a cumbersome enforcement process, and overcome the backlog that developed when the coverage of the *Code* was significantly expanded but not its resources.

Its role has been reactive, not proactive, and geared to individual cases of discrimination, not systemic discrimination.

Placing almost all the resources into pursuing individual claims and leaving out a broad, strategic approach is costly, time-consuming, and unlikely to bring about positive results. Even if an individual claim is successful, it usually changes the circumstances of the individual only and makes little difference in overcoming widespread, systemic discrimination in society.

This approach uses up the time, resources, and energy of claimants and respondents, not to mention the personal and emotional costs it exacts, but without achieving the real goal of the *Code*, which is to ensure that equality rights are respected throughout society.

The absence of a systemic approach to achieving human rights for all has worked to the detriment of everyone concerned. It has led to the need for separate Employment Equity and Pay Equity laws and mechanisms requiring systemic approaches in those particular areas.

The benefits of a strategic, broad-based approach are:

- significant, broad results can be achieved in overcoming widespread discrimination;
- members of disadvantaged groups covered by the *Code* do not have to take on their shoulders the burden of continually bringing forward claims;
- the respondent community does not have to use up resources in dealing with an unending stream of individual claims; and
- a clear, consistent standard is applied across a whole industry or service sector so that the equality seeking and respondent communities know what to expect.

Under the new system proposed by the Task Force, Human Rights Ontario will no longer have responsibility for handling individual claims. It will therefore have the ability to concentrate on its other significant equality responsibilities.

In the view of the Task Force, the new Commission should maintain the powers of investigation it presently has under the *Code* in order to obtain necessary evidence to support claims of systemic discrimination. The information gathered by it could be used in a claim taken forward by the Human Rights Ontario itself, or could be used to assist a community group in pursuing a systemic claim.

If information was denied to the new Commission, it would ask the Tribunal to order that the information be provided.

Regulation or Rule-Making Power

In order for Human Rights Ontario to play a strong, proactive role, the Task Force was told the new Commission should be given the power to make regulations.

At present, the Commission does not have the power to make regulations. The *Code* allows only the government to make regulations, and then only on two matters: prescribing standards for assessing what is undue hardship under the *Code*, and prescribing forms and notices. This regulation making power has never been used.[24]

The setting of regulations will create clear standards that will bring about systemic change. Pursuing a great many individual cases can take many years and have haphazard effect.[25] Regulations can also provide more certainty and predictability for all concerned with human rights. Under the *Canadian Human Rights Act*[26], the Canadian Human Rights Commission has the power to make guidelines that are binding on Human Rights Tribunals. The Canadian Commission has passed a number of guidelines, in particular, a guideline to interpret equal pay for work of equal value under the *Act*. The Canadian Commission is proposing that it should have the power to hold public hearings and pass regulations interpreting the *Act*.

Agencies responsible for human rights in the United States, such as the Equal Employment Opportunities Commission, have a long tradition of making regulations to enforce human rights laws, such as the 1990 *Americans With Disabilities Act*.[27] Strong representations were made to the Task Force that a standard setting, regulatory approach is essential to bring about systemic change for people with disabilities.[28]

In a research paper prepared for the Task Force, the Honourable Robert F. Reid states:

> In ordinary constitutional and administrative law practice, general initiatives are not accomplished by decisions in individual cases but by regulation. I do not know how the

> Commission was expected to carry out its broad mandate without wider powers of regulation than what at present may be accomplished under s. 48, which deal with relatively trivial matters. The Commission was given a sweeping mandate to eradicate discriminatory practices in this province but no apparent power to carry it out.[29]

Some equality seeking groups told the Task Force they did not favour giving the Commission regulation making power; they felt better results could be achieved by taking cases to a hearing; they also felt that regulation making power might take the control away from equality seeking groups to bring about change in the way they want.

The Task Force believes that regulation making power could be a means to enforce human rights more effectively in certain circumstances.

While usually the Government is responsible for regulations, the Task Force believes it would not be appropriate for the Government to have the power to pass regulations in an area in which the Government is the most frequent respondent under the *Code* and has such wide-ranging and costly *Code* responsibilities.

An example of this potential conflict of interest is the non-binding Guidelines for Accommodation of Persons with Disabilities, issued by the Commission. These guidelines do not have the force of law; to date the Government has not acted on the Chief Commissioner's request to enact the guidelines into law as regulations. Before the Guidelines for Accommodation were finalized, the Commission circulated drafts for comment to all interested groups. These guidelines and the process by which they were made received widespread acceptance from equality seeking groups. They have been adopted by the Workers' Compensation Board and are referred to by many respondents.

There is a provision under Ontario law[30] to allow bodies such as the Commission to make regulations. In the view of the Task Force, therefore, Human Rights Ontario should be given the power to make regulations that enable it to play a strategic and proactive role. In deciding how to play this role however, it should listen carefully to the views and wishes of the disadvantaged group whose rights are at stake.

The regulations should be developed through a process of public consultations seeking the input of all interested parties. The Government itself should be required to participate in the public consultations and present its views from the standpoint of the various important roles it plays as the major employer and service provider in the province, as the body representing all the people of Ontario, as the body responsible for setting public policy and as the body responsible for managing the finances of the province.

The regulations developed Human Rights Ontario should be aimed at making the enforcement of the *Code* more effective, productive, and efficient. They should be binding on everyone, including the Tribunal. The new Commission should carry out regular audits to ensure the regulations are being followed and are achieving positive results. The Task Force believes that

Human Rights Ontario should have the same powers of investigation and audit as those proposed by the Employment Equity Commission.[31]

In recommending a rule-making power in Human Rights Ontario, the Task Force is well aware that this represents a change in the existing powers of the Commission. However, the Commission's expertise and new structure makes it particularly suited for this role.

RECOMMENDATION (7):

- **The Task Force recommends that Human Rights Ontario be given the express power to issue legally binding rules and regulations in order to carry out its mandate to advance full and effective achievement of the *Code*'s purposes.**

- **Regulations should be passed only if they have been the subject of full public consultations conducted by Human Rights Ontario. Such publicx consultations would include equality seeking groups and persons responsible for ensuring equality. The Government should participate in its capacity as a major employer, service provider, law and policy maker and body responsible for the public purse. In this way, all of Government's various concerns would be identified in a public way.**

Other Strategic Approaches

Human Rights Ontario could use a number of approaches to overcome society-wide discrimination.

... recommend law reform ...

In its research and monitoring role, Human Rights Ontario could call for law reform where it concluded that current government policies are inadequate to overcome particular ongoing problems of discrimination.

... hold public inquiries and report on compliance ...

It could hold public inquiries, calling witnesses, experts, and interested parties to appear and answer questions. The new Commission should be given the powers required to play this role. It could issue public reports on how well sectors and businesses are doing in eliminating systemic discrimination.

... *ensure accessibility standards implemented* ...

Human Rights Ontario could take action to ensure that clear, accessibility standards are effectively implemented for people with disabilities with regard to buildings, transportation, and services; and that children with disabilities enjoy the right to integrated education along with their peers. The new Commission might call on the Government itself to adopt and enforce such standards. If this did not bring results, the Commission could develop regulations setting such standards.

... *ensure compliance with equality rulings* ...

A representative of the Ontario Council of Sikhs pointed out to the Task Force the wastefulness and frustration of repeatedly having to pursue human rights claims to hearings and through the courts when a decision has previously been handed down on the question. For example, human rights rulings have upheld that Sikhs should not to be discriminated against for wearing the turban and the kirpan (small, symbolic dagger), as required by their religious belief, but they are continually having to struggle to ensure this right in all areas.

In order to eliminate the need for continual cases on the same issue, Human Rights Ontario could pass a clear guideline spelling out that the *Code* requires all employers, accommodation, and service providers to respect the right of Sikhs to wear the turban and the kirpan.

As another example, a human rights ruling from the courts required a particular movie theatre to be accessible and provide space in the theatre for people using wheelchairs.[32] However, movie theatres in general have not complied with this ruling. If a human rights claim, taking years of dedicated effort, results in only one movie theatre making itself accessible, equality rights for people with disabilities are not greatly advanced.

The new Commission could play an important role by taking whatever action would ensure that equality decisions under the *Code* are, in fact, implemented everywhere in the province.

... *use statistical and other information to identify discrimination patterns* ...

Human Rights Ontario should use statistical and other information on rights claims provided to it by the Equality Rights Centres and the Tribunal to assist it in identifying and targeting major patterns of discrimination.

... *use testing to identify systemic discrimination* ...

Testing is a way to find out whether discrimination is being practised. Testing can be used for example, to identify race discrimination in accessing accommodation. A person of colour sent to apply for an apartment advertised as available may be told that the apartment has already been rented. A white person, then sent to apply for the same apartment, may be told the apartment is, in fact, still available and be invited to rent it.

This procedure is called testing. Training and expertise have been developed to ensure testing is carried out in a reliable and objective manner. Courts have accepted the evidence testing provides.

Testing could be used by Human Rights Ontario as a means to identify systemic discrimination. It has, in fact, been used in Canada to help prove complaints of discrimination and has also been used as a research device to help document the extensive discrimination. In the report *Who Gets the Work*, for example, people with the same qualifications and experience were sent to apply for the same jobs. Some of the applicants were people of colour, some were white. The results of the testing showed applicants received significantly different treatment depending on the colour of their skin. People of colour received far fewer job offers and were given a more negative reception.[33]

A project to test race discrimination in housing was carried out by the Quebec Human Rights Commission. Again, the results showed widespread race discrimination being practised against people of colour seeking rental accommodation.[34]

The Quebec Commission has also used testing at times to obtain evidence in human rights complaints, particularly when the situation is transitory and the evidence may disappear, for example, when a person is seeking to rent an apartment. The Commission tested in two rental cases[35] that went before the courts - one involving a claim of race discrimination, the other involving discrimination against a blind person using a dog guide. In neither case did the landlord say that race or disability was the reason for denying the accommodation, but simply said the accommodation was not available. Testing supplied the evidence that in fact, the accommodation was available and that discrimination had occurred. Both cases were won.

Testing is used regularly by human rights commissions in the United States and is considered by many to be an essential means of challenging systemic discrimination. The U.S. government department of Housing and Urban Development has provided extensive funding over the years to develop and validate testing as a reliable technique that can document and help eliminate racial discrimination in housing.

... take proactive approach to systemic housing discrimination ...

The new Commission could take a strong, proactive approach in the area of rental accommodation, where serious problems of discrimination are experienced by people of colour, single mothers on welfare, people with disabilities, Aboriginal people, and other disadvantaged groups. These problems are referred to in more detail in Section XX, Proactive Role for Employers, Accommodation and Service Providers.

The Task Force believes that. similar to the employment area, a systemic approach must be used to overcome housing discrimination.

Human Rights Ontario itself or an advocacy group could, for example carry out regular testing as a way to bring to light systemic discrimination. The new Commission or an advocacy group, funded by the Significant Case Fund, could use the results of the testing to initiate a claim covering a variety of landlords and calling for a broad, strong remedy, which would include ongoing monitoring of the entire rental sector.

If significant positive results are not achieved, Human Rights Ontario could pass regulations requiring broad-based change. Major landlords and rental agencies could be required to report regularly to the new Commission on their rental practices. Such reporting is presently required by some human rights commissions in the United States and has been found to be an effective and practical means of overcoming race discrimination in accommodation.[36]

... take proactive approach to systemic discrimination in services ...

Human Rights Ontario could play an important proactive role in overcoming systemic discrimination in services, such as health services, education, and transportation.

The new Commission could carry out research of its own, as well as make use of research done by others, in order to target major patterns of discrimination in access to services in Ontario. It could investigate and initiate systemic complaints, hold public meetings or develop regulations in order to achieve broad, positive results.

For example, the new Commission could ask for service equity plans, starting first with the Ontario government itself, which is the largest provider and funder of services.

The Task Force believes it is particularly important that Human Rights Ontario take broad, proactive measures to address systemic discrimination in accommodation and services because a special initiative has not been created for these crucial areas, as it has been for employment.

In this regard, the Task Force notes that the *Code* allows the provincial government to set as a condition of any contract or grant that recipients must meet the *Code*'s equality standards in its employment practices.[37] The *Code* should also, in the Task Force's view, allow the Government to set the same equality requirement for services provided by contractors.

... proactive role in employment ...

Human Rights Ontario would work with the Employment Equity Commission to coordinate responsibilities in the area of employment, which would depend on the scope of the new *Employment Equity Act*. It would continue to have responsibility to develop proactive systemic initiatives for those not covered by that *Act* or not covered fully, that is, different ethnic groups and different creeds; and people discriminated against because of their sexual orientation, their family or marital status, or their record of offences.

RECOMMENDATION (8):

The new Commission, "Human Rights Ontario", should

- **maintain its strong, public interest mandate to advance human rights in Ontario; to act on the side of equality and against discrimination as the public conscience;**
- **no longer have a mandate to process, investigate, or settle individual human rights complaints;**
- **where necessary, investigate and then initiate key, systemic cases and seek broad remedies to ensure compliance by those responsible for providing equality;**
- **monitor and report on the overall functioning of human rights enforcement in the province;**
- **research, document, hold public inquiries, report on, and take initiatives to overcome major problems of discrimination;**
- **promote, assist, and encourage public agencies, business, and other organizations to engage in practices that proactively advance the cause of equality rights enforcement;**
- **promote the establishment of partnerships between those persons responsible for ensuring the equality of treatment of Ontarians and those Ontario citizens who require the protection of the *Code* in order to facilitate the establishment of practices and programs that proactively advance the cause of equality rights enforcement;**
- **work with the Employment Equity Commission to coordinate responsibilities in the area of employment;**
- **promote the empowerment of equality seeking groups to speak for themselves and represent themselves;**
- **maintain close liaison with community advocacy and specialized bodies working for the advancement of human rights and recognize their expertise;**
- **provide funding to the Equality Services Board to provide appropriate services to human rights claimants around the province and special funding for community**

groups to bring forward significant cases that will have a major impact on advancing equality rights for disadvantaged groups;

- **have the power, in consultation with the affected group and in coordination with other community initiatives, to investigate, file and pursue systemic discrimination complaints before the Tribunal and intervene as appropriate in the public interest;**
- **have the power to consult broadly and draw up policies, guidelines, and regulations to more effectively overcome problems of discrimination;**
- **monitor and report on the laws, policies, and practices of the provincial and municipal governments and their compliance with Canada's international treaty obligations in the field of human rights;**
- **plan and develop educational material and educational initiatives in partnership with equality seeking groups and those responsible for ensuring equality;**
- **with respect to services, provide assistance and information for the community responsible for ensuring equality through the Compliance Services Unit reporting to the Commissioner of the same name; and**
- **appear before a legislative Committee on Equality Rights each year, as well as on an immediate urgent basis if required, to report on**
    - **the state of human rights in the province,**
    - **its own and others activities in reducing the amount of discrimination in the province,**
    - **its recommendations for necessary changes to increase the rate at which discrimination is being reduced in the province, and**
    - **any necessary funding requirements for the proper functioning of the overall human rights enforcement system.**

Number and Role of Commissioners

At present only the Chief Commissioner is a full-time Commissioner; the other seven are part-time, usually meeting for three days every six weeks. Individual Commissioners do not have a clear role. Approximately one-half of their time is spent in reviewing reports from their staff on individual complaints. They decide whether to refer the case to a hearing or to dismiss it;

whether or not to refuse to deal with a complaint; and whether or not to ratify a settlement of a case.

Since Human Rights Ontario will no longer be involved in individual claims and will be able to concentrate its energies on proactive initiatives, the Task Force believes there should be a smaller number of Commissioners, who would be primarily full time and accountable to the public for a specific area of responsibility. In this way, clear responsibility could be assigned and greater results achieved.

Key areas for which Commissioners should be assigned responsibility are: proactive systemic initiatives, education, policy and research, compliance services, and advocacy services. The Chief Commissioner would play a key role of leadership and coordination. An integrated, proactive approach would be used in each area, enabling the Commission to have major impact in overcoming discrimination throughout the province. (See Chart at Appendix 2)

The roles of the Commissioners are described below.

... Chief Commissioner ...

The Chief Commissioner should have overall leadership responsibility, including

- responsibility for creating and leading a dynamic organization, dedicated to the advancement of human rights, by setting strategic priorities, allocating resources, and implementing and evaluating policies;
- responsibility for effective coordination and supervision of the Commissioners and all their units within the new Commission as well as working with those bodies outside the Human Rights Ontario that have responsibility for human rights (Employment Equity Commission, Pay Equity Commission, Anti-Racism Directorate, etc.);
- responsibility to ensure the services of the new Commission are accessible both to Ontario's regions and to the needs of its diverse population;
- responsibility to regularly seek the advice of the Advisory Council and provide it with sufficient support and information to play an effective role; and
- responsibility to act as a strong public spokesperson for the new Human Rights Ontario and for the *Code*.

... Commissioner Responsible for Proactive Systemic Initiatives ...

Among the responsibilities of this Commissioner will be to

- monitor trends in specific industries and sectors in all regions of Ontario and identify systemic patterns of discrimination;
- analyze data from individual claims to determine if any pattern of systemic discrimination is apparent;
- organize public forums with representatives of all stake holders to discuss and seek solutions to problems of discrimination;
- hold public hearings and public inquiries, publish reports, and make recommendations to government;
- in consultation with the affected group and in coordination with other community initiatives, investigate, file and, pursue systemic discrimination complaints before the Tribunal and intervene as appropriate in the public interest; and
- hold wide public consultations in order to develop and pass regulations.

... Commissioner Responsible for Education ...

Among the responsibilities of this Commissioner will be to

- develop and implement creative and innovative educational strategies, in partnership with the Advisory Council, so as to increase understanding of human rights by the general public;
- use creative and nontraditional approaches to inform disadvantaged communities of their rights and how to access the human rights system;
- widely distribute regular, up-to-date information to community groups and the general public on human rights developments and decisions;
- assist the Commissioner of Compliance Services in identifying needs and educational resources to assist the community responsible for ensuring equality;
- work with the Commissioner of Advocacy Services to identify needs and develop training for community advocates; and

- use the following principles in developing educational initiatives:
    - Is the educational campaign accessible?
    - Does it adopt a consumer-centred, empowering approach to human rights education?
    - Does it use the existing human rights expertise within the community?
    - Does it meet specific regional needs?

... Commissioner Responsible for Policy and Research ...

Among the responsibilities of this Commissioner will be to

- carry out strategic research to identify and analyze major issues of discrimination and recommend effective strategies to overcome such discrimination;
- monitor government laws, policies, and practices for their impact on human rights and subsequently prepare reports and recommendations that Human Rights Ontario will submit to the Legislative Committee on Equality Rights;
- analyze decisions of the Equality Rights Tribunal to determine if any clear patterns are emerging; and
- provide research and advice to assist in the development of regulations.

... Commissioner Responsible for Compliance Services ...

Among the responsibilities of this Commissioner will be to

- consult with major organizations representing employers and service and accommodation providers to determine their needs in complying with the *Code*;
- provide information and support to assist the community responsible for ensuring equality in obtaining human rights training and resources;
- meet with individuals and organizations representing that community to develop proactive human rights policies and practices; and
- consult with representatives of this community with regard to proposed binding Regulations.

... Commissioner Responsible for Advocacy Services ...

Among the responsibilities of this Commissioner will be to

- advocate for the necessary resources for the Equality Services Board to provide appropriate services to human rights claimants around the province and special funding for community groups to bring forward significant cases that will have a major impact on advancing equality rights for disadvantaged groups;
- set, monitor, and evaluate the overall service standards for the Equality Rights Centres, after seeking the advice of the Equality Services Board;
- sit on the Equality Rights Board as an ex-officio Member; and
- provide an annual report to the Commission Advisory Council on advocacy services provided to the community, which would include a report from the Equality Services Board.

RECOMMENDATION (9):

Six Commissioners should be named, each with specific areas of responsibility:

- **the Chief Commissioner with overall leadership and coordination responsibilities;**
- **Commissioner Responsible for Proactive Systemic Initiatives;**
- **Commissioner Responsible for Education;**
- **Commissioner Responsible for Policy and Research;**
- **Commissioner Responsible for Compliance Services; and**
- **Commissioner Responsible for Advocacy Services.**

Resources and Coordination

Human Rights Ontario should receive adequate resources to enable it to play a leadership role as an independent agency with the important, almost constitutional mandate of advancing human rights in Ontario.

The Commissioners should work together as a dynamic, coordinated team under the leadership of the Chief Commissioner. They would share an integrated, proactive approach aimed at achieving significant, province-wide results. They would work in partnership with community groups and would be committed to the principle of community empowerment and self-representation. They would work with those responsible for ensuring equality.

It is imperative that the new Commission have sufficient staff to

- prepare, research, investigate and audit, and analyze systemic cases,
- monitor and report on equality issues, and
- develop and consult on regulations.

The degree to which Human Rights Ontario succeeds in reducing systemic discrimination in the province through its proactive, broad-based initiatives will substantially affect the number of individuals needing to file claims and seek redress at the Tribunal.

It is, therefore, in everyone's best interest for Human Rights Ontario to achieve effective results.

Accessibility

... regional accessibility ...

The new Commission, with its new more focused role, must still ensure that its service will involve and be informed by the concerns of all Ontario's regions. The Advisory Council made up of members from across Ontario will play an active role in this regard. The Commissioners will also reflect regional diversity. Human Rights Ontario can make use of modern technology to facilitate regional communication. There will likely also be a need for the new Commission to have some staff working in the regions.

... physical and other accessibility ...

Human Rights Ontario must ensure that barriers to its services are eliminated. Its regional offices must be physically accessible. Furthermore, its services must be available in formats that are understandable by all its consumers, not just those who read English.

RECOMMENDATION (10):

- **The new Commission, with its more focused role, must still ensure that its service will involve and be informed by the concerns of all Ontario's regions.**
- **The new Commission must ensure that barriers to its services are eliminated. Its regional offices must be physically accessible. Its services must be available in formats which are understandable by all its consumers and not just those who read English.**

Appointment Of Chief Commissioner And Commissioners

Human Rights Ontario is asked to represent the fundamental public interest in overcoming discrimination against Ontarians who belong to groups that are vulnerable and who lack social, economic, and political power.

Like an Ombudsman or an Auditor General, the new Commission is supposed to be a watchdog against abuse of power. It is therefore vital that Human Rights Ontario be clearly independent and committed to the purposes of its legislation.

RECOMMENDATION (11):

- **The Chief Commissioner and Commissioners should have a demonstrated commitment and proactive expertise in the field of human rights and the empowerment of members of equality seeking groups. They should have public leadership and communication skills, and familiarity with equality issues and the operations of business, government, and community organizations.**
- **The Commissioner for Compliance Services should have a background of demonstrated and effective proactive human rights implementation in the field of employment accommodation or services.**
- **The Chief Commissioner and Commissioners should be appointed through the independent process of the Equality Rights Appointments Committee after consultation with equality seeking groups and those responsible for ensuring equality.**
- **The representativeness of groups protected by the *Code* and the different regions of the Province should be considered in the appointment of the Chief Commissioner and Commissioners.**

- The Chief Commissioner and Commissioners should have a term of five years with an option to renew for a further 5 and their terms should be staggered as much as possible to ensure continuity.
- The Chief Commissioner should be consulted by the Equality Rights Appointments Committee when the Committee is considering reappointment of a Commissioner.

XIII. FILING HUMAN RIGHTS CLAIMS

Who Can File Human Rights Claims

Presently the *Code* limits the filing of equality claims to individuals who are filing on behalf of themselves and to the Commission who can make a claim on anyone's behalf. In practice, almost all the claims filed are by individuals. The Commission has rarely used its right to initiate claims.

The Task Force believes a well thought out, strategic approach to achieving equality rights is essential. While dealing with individual cases as they happen to come along is important to the individual, such a limited approach is not likely to make significant advances in changing major patterns of discrimination in society. It is to everyone's advantage to overcome discrimination in a planned, strategic manner so as to avoid the need for a costly and unending stream of individual claims that are stressful for all involved.

The Task Force believes that amending the *Code* to allow equality seeking groups to file third party claims will provide an important new strategic focus. Equality seeking groups and the Human Rights Ontario can, and should, play a leadership role in addressing major, serious issues of discrimination so as to bring about significant, widespread change for all members of the disadvantaged groups.

The experience in the courts with equality rights cases under Section 15 of the *Charter* vividly demonstrates the importance and effectiveness of allowing equality seeking groups to take forward cases on their own behalf.

Groups like the Women's Legal Education and Action Fund and the Canadian Disability Rights Council are able to think through the implications of a particular case, or a particular argument, or a particular remedy, in the context of an overall strategy to advance equality rights for all members of the disadvantaged group. People with equality claims often approach such groups for assistance.

It is essential that equality seeking groups play a key role in the fight for equality. Courts at every level, up to the Supreme Court of Canada, now regularly look to such groups as intervenors to provide their expertise, authenticity, and unique perspective to the court.

The possibility of filing a third-party claim should also be available to individuals. In some circumstances, for various reasons, a person experiencing discrimination may not be able to file a claim and may wish a trusted person to do so. For example, the Task Force was told of a situation where persons of colour were receiving racially discriminatory treatment. The individuals were vulnerable, elderly people in an institutional setting and it was impossible for them to file a human rights claim. In such a circumstance, it is essential that another person be able to file a third party claim. The *Pay Equity Act* has such a provision, allowing another person to bring forward the claim on behalf of persons who wish to remain anonymous.[38]

It is also important to provide a process to allow for the claims of persons or groups against the same respondent, or which raise the same issues of fact, or law, to be joined or heard together. This will help to provide for a more efficient and focused hearing process and use available resources to their best advantage.

RECOMMENDATION (12):

The *Code* should be amended as follows:

- **Where a person believes that her right to equality under the *Code* has been infringed, the person may file a claim.**
- **A group of individuals may file a joint claim where their claims are against the same respondent or have questions of fact or law in common.**
- **An individual or group or the Commission may file a claim where they believe the *Code* has been infringed.**

Investigation of Claims

At present, the Commission is required to investigate all claims. This investigation has a number of aims: to assist in the process of trying to settle the case, to assist the Commissioners in deciding whether to dismiss or recommend the appointment of a Board of Inquiry and to prepare the case for a possible hearing.

Most claims are not, in fact, investigated or investigated fully by the Commission. Over half (55 per cent) are dealt with through an early settlement process where no formal investigation is done. Other claims are refused by the Commission for various reasons before any substantial investigation. Some are withdrawn during the long wait for an investigation.

The Task Force believes the role of the investigating human rights officer is confusing; the system is extremely centralized and lengthy with each case going through many different layers of officials and often including changes of officers at the Commission.

The Task Force heard great dissatisfaction expressed by both claimant and respondent groups with the way claims are investigated. Many were waiting months or years for an investigation to begin. Simple cases that did not require extensive investigation were held up behind more complicated cases.

Neither claimants nor respondents seem well informed as to what is happening to the case or why; many felt that the investigation that was done was not done properly and did not focus on the issues and evidence that they believed important to their case; neither claimants nor respondents have direct access to those who are making decisions about the case, nor do claimants and respondents have direct access with one another.

In the view of the Task Force, the current system of investigation must be changed. It is confusing, slow, costly, frustrating, and inefficient.

The Task Force believes that a more focused approach to investigation should be adopted. The *Code* should no longer require that every claim be investigated by a human rights officer. Investigation is really just the process of inquiring into the circumstances of the case to see what happened; to assist in determining whether any solution can be found short of a hearing; and to prepare for bringing the necessary evidence required for a hearing.

The Task Force believes that a more efficient and effective investigation would be carried out if the responsibility for it were given to the person or group who filed the claim or their advocate. Such advocates would be able to work with the claimant to determine what the facts are and what evidence is needed.

Respondents and their advocates would also be able to best determine the facts and evidence needed for an initial response.

Many people suggested to the Task Force that a system of discovery would be an improvement. Both claimants and respondents voiced support for a requirement that the parties to a claim be required to exchange information with each other about the nature of their case and the evidence to be called. This process is dealt with further in Section XVI on the Tribunal.

Some cases will require extensive and thorough investigation: for example, a case alleging systemic discrimination by a major service provider or a broad based claim against a particular industry. In the system proposed by the Task Force, resources have been provided for crucial, major claims of this kind. Human Rights Ontario will have resources and a mandate to initiate significant cases of this nature. Equality seeking groups will also be able to bring forward major systemic cases, using the resources of the organizations with special expertise in the area to carry out the research and investigation or requesting special funding for a significant case from the Significant Case Fund of the Equality Services Board.

Human Rights Ontario, equality seeking groups, individuals, or a respondent will also be able to ask a human rights adjudicator to order any necessary investigation to be carried out by a Tribunal Officer.

In the new system proposed by the Task Force, the following provisions will ensure claims are investigated properly:

- the role of the Tribunal Officer in monitoring whether the parties have lived up to their responsibility to exchange information,
- the power of the human rights adjudicator to order further disclosure where necessary,
- the power of the Tribunal Officer to order an investigation by the Tribunal Officer where the disclosure process has not been sufficient, and
- the overall statutory requirement for the adjudicator to ensure that the case is heard on its merits and the real substance of the case is brought forward.

Providing Assistance to Claimants

The system the Task Force is recommending will provide accessible supportive assistance to people with rights claims. The way this assistance will be provided is outlined in Section XI, Providing Support for Claimants.

The Task Force believes that the proposed community-based Centres with trained lay advocates, the funding of special centres of expertise, the requirement for discovery and disclosure, the investigation powers of Tribunal Officers, will help make sure that rights claims receive the attention and support they deserve.

Processing Rights Claims More Effectively

It is important that rights claims be processed in a timely and effective manner. Claims that are outside the *Code*, or that lack any merit, should be screened out in a way that is fair, but that is also practical and cost-effective.

The Task Force believes that much time and money are wasted by the way claims lacking any merit are handled under the present human rights system. The Commission does not currently have a lot of credibility in the eyes of many claimants. Consequently, when Commission staff tell a claimant that her or his claim lacks merit under the *Code*, claimants are less likely to trust their advice. The claimant may continue to insist on pursuing the claim or go away disillusioned with the system. Claimants are less likely to trust their advice.

The Commission is also a complex and, often, closed system. The Task Force found that people were confused and frustrated because they had great difficulty getting clear information about the status of their claim or the Commission's policies and procedures on a given point.

With the current highly centralized Commission system, it often takes months or years, with a claim passing through numerous hands, before a final decision is given rejecting a claim as lacking merit. The claimant never gets to see the decision makers face to face or to hear directly their reasons for rejecting the claim.

As pointed out by many equality seekers and respondents, this makes for a very costly, slow and unsatisfactory way of screening out claims without merit.

Community advocacy organizations that now deal with human rights claims, even though having no official mandate to do so, handle thousands of claims and enquiries to do with human rights. Organizations such as the Centre for Equality Rights in Accommodation, the Canadian Jewish Congress, and the Urban Alliance on Race Relations regularly and effectively screen out claims that lack merit, settle many claims, and assist other claims to go forward.

Of the 800 claims of discrimination received by Centre for Equality Rights in Accommodation (CERA) in 1991/92, 37 per cent resolved through referrals or the provision of summary advice, 53 per cent resolved through CERA-initiated mediation, 6 per cent pursued as formal claims. The Task Force heard frequent praise around the province for the effective assistance CERA provided to people, particularly single parent mothers, in pursuing housing discrimination claims.

Of 215 cases handled by the London Urban Alliance on Race Relations over the past five years, 87 per cent were resolved through amicable settlements.

The Canadian Jewish Congress (CJC) dealt with 23 human rights claims over the past years. After receiving information and advice from the CJC, the individuals in 11 of these cases dropped the claim. Seven of the cases were resolved by mediation efforts of the CJC, two were referred to hearings, and three are ongoing.

The Task Force believes that advocacy services, based in the community and accountable to those they serve, will be better able to discourage claims that lack merit and bring about settlements of claims. Furthermore, the new Tribunal will have the power, if a claim that clearly lacks any merit is filed, to dismiss the case without a hearing and then to provide an appeal from that decision to an initial hearing if the claimant so requests.

Use of the Officer Order Approach

One method recommended to the Task Force, to get quicker decisions on claims lacking any merit was to give human rights officers the power to dismiss such claims. This is an approach favoured by the Ontario Public Service Employees Union (OPSEU), which represents the Commission staff. It is a system currently used under the *Pay Equity Act*, where review officers make the initial order. Apart from the Pay Equity Commission, no one else favoured this approach.

Under this system, it was suggested, an officer could also make decisions to uphold claims and order remedies. The officer, for example, could go out to a workplace, examine the situation, speak to both parties, and make an order. Thus in an urgent situation, such as a case of sexual harassment, or in a case of a dismissal, the officer could make an immediate order for certain actions to be taken or not taken. The officer's decision could then be appealed to a full hearing by another body.

At first glance, this approach seems to offer speed and low cost. However, on examining the idea more closely, the Task Force came to the conclusion that it was, in fact, more likely to cause delay and additional costs and further would not be seen as a sufficiently credible solution.

The single, strongest point made to the Task Force in the presentations it received was that claimants should have options and access to a hearing, if necessary. People criticized in no uncertain terms what they saw as the arbitrary, decision-making power of the Commission.

If human rights officers were given the power to make orders, the Task Force believes that in the great majority of cases, claimants and respondents would appeal those orders to the expert adjudication hearing body, necessitating a second hearing. The system used under the *Pay Equity Act* has been criticized because of this duplication of process and subsequent backlog of cases.

In addition, if human rights officers became involved in deciding individual human rights claims, the Commission would no longer be able to play the leadership role, advancing equality rights in significant, broad-based cases that it should be filling.

For these reasons, the Task Force did not adopt the idea of an officer order approach to deciding human rights claims.

Quick Dismissal of Claims without Merit

If a claim is, in the view of the Equality Rights Centre, outside the jurisdiction of the *Code* or completely lacking substance, the Centre could refuse to provide support, but the claimant still has the right to take his or her claim to the Tribunal.

... claims outside the Code ...

The Tribunal Registrar would advise the person promptly if the claim was not accepted and did not come under the jurisdiction of the *Code*, for example, if it was filed against a bank that is under federal jurisdiction. If the claimant did not accept this view, the Registrar would submit the claim to the Associate Chair responsible for the Adjudication Section.

If this Associate Chair found that the claim was outside the *Code*'s jurisdiction, but the claimant did not accept this decision, the claimant could appeal the decision at a hearing before a human rights adjudicator.

This hearing would, in many cases, be quite brief. The adjudicator would have the power to either make a final decision refusing the claim, or to rule that the claim should be accepted.

... claims without merit ...

If a claimant has been advised by an advocate at an Equality Rights Centre or by the Registrar that his or her claim lacks merit, but does not accept that advice, the person would have access to an initial hearing before a human rights adjudicator who could either dismiss the claim or order investigation, representation by an advocate and a full hearing.

The Task Force believes that the vast majority of persons will accept a decision that their claim is not covered by the *Code*, or lacks merit, when this decision is made by independent Centres whose only role is human rights advocacy and whose track record shows that. However, some individuals will be determined to pursue their claim. And they may, in fact, be right.

Quick access to an expert hearing body for a final decision is, in the Task Force's view, the fairest, most practical and most cost-effective way to make decisions rejecting claims. The present system of making such decisions behind closed doors just doesn't work.

RECOMMENDATION (13):

- **If the Tribunal Registrar considers a claim to be outside the jurisdiction of the *Code*, or without any merit, the Registrar should so advise the claimant promptly and no later than five days after filing the claim. If the claimant does not accept this view, the Registrar should submit the claim to the Associate Chair responsible for the Adjudication Section for a decision as to whether the claim should be accepted or not. If the Associate Chair decides that the claim is outside the jurisdiction of the *Code*, the claimant should be advised within 15 days of filing the claim and have the**

right to appeal this decision at a hearing before a human rights adjudicator. The decision of this adjudicator is final.

"Trivial, Frivolous, Vexatious, and Made in Bad Faith" Claims

Presently, the Human Rights Commission has the power to refuse a claim it considers to be trivial, frivolous, vexatious, or made in bad faith.

The Task Force believes that the wording "trivial, frivolous, vexatious, or made in bad faith" should be removed from the *Code*. What is important is to deal promptly and efficiently with claims that lack merit; giving claims derogatory labels does not help anyone.

Making a human rights claim takes time and energy. The subject matter of a claim may not constitute a potential contravention of the *Code*, but this does not mean it is trivial, frivolous, vexatious, or made in bad faith.

An Aboriginal woman working in a women's shelter in the north of the province told the Task Force how insulted she felt when the Commission, quoting Section 34 of the *Code* that speaks of frivolous complaints, rejected a claim she filed on behalf of a homeless Aboriginal woman who was denied housing and did not speak English.

According to a representative of the Human Rights Commission, most of the claims refused by the Commission are ones the Commission considers to be outside the jurisdiction of the *Code*.

Of a sample 99 claims refused by the Commission during a four-month period in 1991, almost half (48 claims) were refused as being outside the jurisdiction of the *Code*. The claims alleged disability discrimination, but were refused by the Commission as being temporary illnesses that, in the Commission's view, did not constitute a disability under the *Code*.[39] Another major group of claims (35 claims) challenged mandatory retirement at age 65 and were refused by the Commission as outside the *Code*'s jurisdiction. (The large of number of cases in this sample refused as not constituting a disability or dealing with mandatory retirement was, no doubt, due to the fact that rulings had recently been handed down on these issues.)

Another four claims were refused as alleging grounds not covered by the *Code*, such as political belief or discrimination in occupancy for a person under 16 years of age. Six cases were refused as out of time and three as having been dealt with under other legislation. Only three of the 99 cases rejected fell under the category "bad faith" or "frivolous" in the *Code*.

Changing the wording in the *Code* to provide that only claims outside of the jurisdiction of the *Code* may not be accepted will ensure that claims are treated with more respect.

The Task Force considers that the present language is derogatory and unnecessary and promotes a stereotype and prejudice against people who make human rights claims. It should be removed. The Human Rights Commission made a similar recommendation to the Task Force.

RECOMMENDATION (14):

- **The wording "the subject-matter of the claim is trivial, frivolous, vexatious, or made in bad faith" should be removed from the *Code*.**

Dismissing Claims That Are Untimely

Presently there is a six month time limit for filing a claim under the *Code*. Claims older than six months can, however, by accepted if the Commission is satisfied the delay happened in good faith and no substantial prejudice will happen to any person affected by the delay.

A recent study on different time limits in Ontario laws criticised the short time limits in many laws and recommended that, in most cases, the limitation period should be two years.[40]

The Task Force believes that the time limit for filing claims under the *Code* should be two years. However, discretion should be retained to accept a claim made outside the normal time limit - for example, in a situation where the claimant may not realize that he or she has been the victim of discrimination until well after the act occurred. In such a situation, the Tribunal should be able to "postpone" the limitation period so that it starts to run only from the time that the claimant actually found out about the discrimination. This is consistent with the way that courts have looked at time limits.[41] It is also consistent with the proposals for a new *Limitations Act* that support the principle that limitations periods should not start to run until people are actually aware of the injury or loss they have suffered.

RECOMMENDATION (15):

- **The six-month time limit for filing claims under the *Code* should be changed to the two-year limit to be consistent with the proposals for a new *Limitations Act*, with discretion for the Tribunal to accept claims beyond two years, if the Tribunal is satisfied that the delay was in good faith and no substantial prejudice will result to any person affected by the delay.**

Protecting Rights Claimants from Retaliation

A law that protects people from discrimination must also protect them from retaliation and intimidation.

Most human rights claims deal with situations of imbalance in power. For example, a woman, a person of colour, a person with a disability often feels vulnerable and fearful of unpleasant consequences if they file a human rights claim against their employer, landlord or service provider. Their claim may be against persons who provide essential services to them. They may be the only woman, person of colour, or person with a disability working at a particular place or arguing for equality of services.

It takes courage to file a human rights claim challenging discrimination and harassment, yet the person may find that, after filing the claim, the discrimination and harassment are increased.

It is a telling commentary on the inadequacy of protection that many persons who file human rights claims have left their job by the time the case gets settled or heard by a board of inquiry. For example, in most decisions on sexual harassment, the woman who made the claim has had to leave her job. While the board of inquiry usually rules that the sexual harassment that forced the woman to quit her job constituted discriminatory dismissal and while the board usually orders compensation for lost wages, it does not usually order the woman to be reinstated in her job in a work environment freed by the employer of any sexual harassment.

The Task Force believes that stronger measures are necessary to protect persons who make human rights claims. A precedent exists in labour legislation where, once a unionization campaign has been commenced, the employer has the burden of proving that any negative action against the employees was not in violation of the *Act*.

In the same way, once a human rights claim has been filed, the respondent should have the burden of showing at a hearing that any negative action against the claimant or against the claimant's witnesses does not violate the *Act*.

A section of the Ontario *Labour Relations Act* on burden of proof states:

> On an inquiry by the Board into a complaint .... that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to the person's employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers' organisation did not act contrary to this Act lies upon the employer or employers' organization.[42]

In the same way, once a human rights claim has been filed, the respondent should have the burden of showing at a hearing that any negative action against the claimant or against the claimant's witnesses does not violate the *Act*.

RECOMMENDATION (16):

- **Where a person alleges that they have suffered any negative action contrary to the anti-reprisals section of the *Code*, the burden of proof that any respondent did not act contrary to the *Code* should be upon the respondent.**

XIV. OTHER CLAIMS ROUTES - CIVIL AND CRIMINAL

Civil Actions in the Courts

One suggestion made to the Task Force was that individuals should be able to take human rights claims directly to the courts as civil actions. This is not possible at present. The Supreme Court of Canada ruled in *Board of Governors of Seneca College v. Bhadauria* that human rights claims must be handled through the special human rights system provided under the *Code*.[43]

The Task Force carefully considered this suggestion.

Changing the *Code* to allow people, if they wished, to take their human rights claim directly to the courts seems an attractive idea for a number of reasons. It would give people a choice, and it might also take some of the pressure off an Equality Rights Tribunal.

Some people said they considered courts to be more prestigious than Equality Rights Tribunals, and so might prefer to have their claim heard in the courts where other important rights such as *Charter* rights are handled. Allowing the courts to deal with discrimination issues could ensure that both the courts and Equality Rights Tribunals applying the *Charter* shared the same equality view. Monetary awards are also currently higher in the courts.

It would also make sense to have the discrimination issues that are part of existing civil actions (for example, wrongful dismissal) dealt with by the courts at the same time, and not have a separate discrimination claim before another tribunal based on the same facts.

Allowing human rights cases to be decided by the civil courts, however, presents a number of significant disadvantages. Specialized Equality Rights Tribunals were set up precisely because the courts demonstrated a lack of knowledge and understanding of human rights.[44]

In a research paper prepared for the Task Force, former Justice of the Courts, the Honourable Robert F. Reid, stresses that the courts are not expert in the subject matter of human rights and should not hear human rights cases.

> Judges as a group have traditionally been drawn from social classes unsympathetic to social change. This has been perceived as clouding their judgment by inclining them to decide against the change the legislation seeks to achieve. Judges have been perceived as unsympathetic to the problems of the "common-man."[45]

Courts by their very nature traditionally approach issues in a legalistic, narrow manner. The Supreme Court of Canada has rejected this approach as inappropriate for human rights cases.[46]

Giving the courts jurisdiction over the interpretation and application of human rights laws may well lead to the return of an approach based on intent and blame.

Equality seeking groups have fought hard to get away from an individualistic, legalistic approach to human rights, yet one person taking a case to the courts could get a narrow, legalistic interpretation that would then apply to everyone else. This approach also might lead to conflicting judgments from courts and tribunals.

Taking a human rights case to court is an option usually available only to people with the resources to do so, and the delays in the court system are quite serious. This option, therefore, has a number of drawbacks.

In the view of the Task Force, people making human rights claims should have access, within a reasonable time period, to a respected, competent adjudicator.

The system proposed by the Task Force provides this. It also ends the ability of the Human Rights Commission to control access to a hearing.

In these circumstances, which allow claimants access to a hearing, the Task Force believes there are more advantages to be gained by having tribunals with expertise in human rights decide claims. The Task Force also believes that the focus for resources and training at this time should go into the Tribunal, rather than diverting potential resources to judges train and to the civil courts to deal with human rights issues.

If the system the Task Force is recommending is not put in place or does not have sufficient resources to operate satisfactorily, so that claimants do not, in fact, have real access to a hearing, the option of allowing human rights cases to go directly to the courts as civil actions should then be reconsidered. But for now, the focus and resources should be on the new enforcement system.

RECOMMENDATION (17):

- **Human rights claims should continue to be decided by tribunals with expertise in human rights. The *Code* should not be changed to allow claims to go to the courts as civil actions.**
- **If the system the Task Force is recommending is not put in place or does not have sufficient resources to operate satisfactorily, so that claimants do not, in fact, have real access to a hearing, the option of allowing human rights cases to go directly to the courts as civil actions should be reconsidered.**

Criminal Actions in the Courts

Some individuals and groups strongly recommended to the Task Force that human rights claims should be dealt with separately in the courts as criminal offences. In their view, this practice would send a clear message that discrimination is a serious crime with devastating effects.

These groups, primarily from the visible minority community, pointed out the contradiction that criminal law is used to turn a disproportionately high number of people in their community into "criminals," while those who practise and benefit from such discrimination are not so labelled or treated.

The Task Force shares the view that discrimination is a very serious matter. It also believes that, in some instances, people practising discrimination clearly demonstrate that they are motivated by malicious intent, for example, someone in a workplace sabotaging equipment used by a visible minority or female worker who is the first to enter a non-traditional job.

The Task Force also believes that people who commit a criminal offence with the malicious intention to discriminate should also be subject to a higher *Criminal Code* penalty. For example, a person who assaults or steals from a person with a disability because that person is vulnerable and can't fight back should be subject to being convicted of assault or theft with wilful intention to discriminate.

The Task Force does not agree that our human rights laws should be enforced through the criminal courts. In fact, human rights in Ontario were first enforced only as criminal laws.[47] This approach was very unsuccessful and has many disadvantages.

In order to win a criminal case in the courts, it is necessary to prove beyond a reasonable doubt that a person intentionally carried out a criminal act. The *Charter of Rights and Freedoms* sets out a number of protections to ensure that an accused person's right to be presumed innocent is not infringed.

The stress in a criminal case is on individual intent and guilt. The criminal process places a heavy burden on claimants, and criminal penalties are not conducive to seeking or imposing systemic remedies.

Discrimination across Canada is deeply entrenched and systemic. The challenge, in the view of the Task Force, is to find ways to bring about significant, broad changes to end that discrimination. The Task Force believes that requiring positive action to be taken to overcome discrimination; letting claimants get their case before a competent Tribunal; making sure Tribunal decisions are monitored and implemented; and taking strong action to enforce a decision, when necessary, are practical and effective ways to advance equality rights.

In cases involving flagrant acts of overt racism or discrimination against people the *Code* is designed to protect and where criminal intent can be shown, action should be taken under the

Criminal Code of Canada. Similarly, a criminal offence with the intent to discriminate should be a more serious criminal offence with higher penalties.

Certain acts of discrimination are already expressly criminal offences. Section 318 of the *Criminal Code* makes it an indictable offence to advocate or promote genocide.[48] Section 319 of the *Criminal Code* makes it an offence to publicly incite hatred or wilfully promote hatred against an identifiable group.[49] This latter section of the *Criminal Code* has been used.[50] Some offences under the *Criminal Code*, even though not explicitly dealing with discrimination, have been invoked against those who intentionally discriminate. Zundel, for example, was prosecuted under section 181 of the *Criminal Code*, which makes it an indictable offence to spread false news.

As well, the *Criminal Code* offence of aggravated sexual assault is a precedent for the notion that a person may be convicted of a separate, more serious offence based on the type of the assault.

Criminalizing malicious discrimination through the *Criminal Code* will also ensure that the enforcement mechanism under Ontario's *Human Rights Code* remains civil and remedial in nature. Criminal laws are usually enacted to express society's strong disapproval of certain conduct. Malicious acts of discrimination should constitute such conduct and the commission of criminal offences with the intent to wilfully discriminate should also attract greater society disapproval.

The Task Force believes that hateful, intentional discrimination should be punished and that the availability of *Criminal Code* sanctions in these circumstances would assist in the fair and effective enforcement of *Code* rights.

The Task Force is aware that, constitutionally, the federal government has jurisdiction over criminal laws and that the provincial government would therefore have to negotiate with the federal government concerning this recommendation.

RECOMMENDATION (18):

- **The Task Force recommends that the Ontario government negotiate with the federal government to:**
    - **make a *Criminal Code* offence malicious acts of discrimination against persons the *Human Rights Code* is designed to protect and**
    - **make a more serious category for a criminal to commit a *Criminal Code* offence like assault or theft where it is committed with wilful intention to discriminate.**

XV. OTHER CLAIMS ROUTES - LABOUR ARBITRATION

Putting Human Rights Protections in Every Collective Agreement

The Task Force was asked by the Minister of Citizenship to consider the use of other dispute resolution mechanisms to enforce human rights. This included the issue of whether the protections in the *Human Rights Code* should be deemed to be a part of every collective agreement, and if so what requirements should be met.

This issue was also part of the recent *Labour Relations Act* Reform discussion paper. In light of concerns raised in that process, the Ministry of Labour asked the Task Force to consider the submissions which the Ministry received on this issue and to make recommendations to the Government for how the issue should be dealt with.

Ontario Courts have already decided that arbitrators must apply the *Code* when interpreting the collective agreement. That does not in itself guarantee the right to have every breach of the *Code* dealt with as a grievance. A person who is able to fashion a grievance to deal with a human rights issue does not need to go through the *Code* procedure, but may use the collective agreement.[51] Currently, the extent of the rights that can be protected in this way depend upon the specific wording of each collective agreement. Consistent access to this enforcement mechanism requires that common language be included in every collective agreement.

The Task Force believes the protections in the *Human Rights Code* should be deemed to be part of every collective agreement. This will provide an additional, more accessible, way for many workers to get their human rights enforced. Claims would be dealt with right in the workplaces where the issues arise, using the mechanism which the workplace parties have in place already: the grievance and arbitration procedure. At the same time, neither the union nor the employee would be required to choose this route.

The Task Force agrees with the Ministry of Labour's discussion paper that putting human rights protections into every collective agreement "would benefit both employers and employees".[52]

... benefits to employees and unions ...

Making the *Code* part of every collective agreement will clearly allow human rights claims to be pursued as employee grievances and will give employees access to the services of the union in developing their case. Such provisions are already included in many collective agreements. For example, the collective agreement between the provincial government and the Ontario Public Service Employees Union has such clause. So have many collective agreements negotiated by the Canadian Auto Workers, the Canadian Union of Public Employees, and the United Steelworkers of America.

Including such a clause in every collective agreement will emphasize the important role unions can and do play in defending and promoting the rights of all employees, particularly employees who are vulnerable to discrimination. It will also make them accountable to their members for this role.

It should also encourage greater union involvement in human rights and increase demands for human rights training. Unions could, for example, bargain with employers to have human rights training provided to every employee and more extensive human rights training provided to employees with a particular role to play in advancing human rights in the workplace. Clauses like this have already been successfully negotiated by unions such as the Canadian Auto Workers and the Canadian Union of Public Employees.

At its public meetings, the Task Force heard from both union members and union representatives. Union representatives informed the Task Force of their support for a stronger role for unions in pursuing human rights cases in the workplace. They spoke of many major equity initiatives they have taken in their workplaces. At the same time, Union members spoke of the failure of unions to live up to their obligations under the *Code*, by as eradicating systemic barriers in employment practices that may be sanctioned in a collective agreement and supporting individual employees who experience discrimination. What both groups see as essential, however, is the provision of far more training and resources in order for them to play their role effectively.

The Task Force agrees. If the *Code* is to be deemed part of every collective agreement, and if more grievances are to go forward involving human rights, then human rights training and resources are essential to ensure the integrity of the process. For more discussion of the issue of training see Section XX of the report dealing with human rights education and training.

... benefits to employers ...

Giving the option to use the grievance and arbitration procedure for human rights claims also benefits employers. Many employers told the Task Force that they want steps taken to encourage claims to be dealt with directly in the workplace without having to bring in outside parties from an enforcement agency. They felt that solutions which are developed in the workplace by the parties who are directly affected are the best ones.

RECOMMENDATION (19):

- **The *Labour Relations Act* should be amended to provide that the protections in the *Human Rights Code*'s against discrimination in employment are deemed to be**

included in all collective agreements and enforceable through the grievance and arbitration procedure.

- **Union and management representatives involved in the grievance and arbitration procedure and union and management members of arbitration boards should receive human rights training.**

In addition to the *Labour Relations Act*, there are a number of specialized collective bargaining statutes dealing with such groups as police, teachers, public servants, and community college employees. The Task Force believes that it is important that employees covered by those statutes have the same opportunity to have human rights claims dealt with through the grievance and arbitration process.

RECOMMENDATION (20):

- **The Government should undertake an immediate review of all specialized collective bargaining statutes and ensure that amendments, similar to those proposed to the *Labour Relations Act*, which extend the right to enforce the *Human Rights Code* prohibits through the respective grievance and arbitration process are enacted.**
- **All Task Force recommendations with respect to the certification, training, powers and procedures of arbitrators under the *Labour Relations Act* should be implemented to apply equally to arbitrations under any of the province's specialized collective bargaining statutes.**

The inclusion of human rights protections in collective agreements raises some difficult issues about how it will work and what relationship such arbitration procedures will have to the new Tribunal claims system. These include:

- whether labour arbitrators possess sufficient expertise to deal with human rights issues,
- employer concerns about proceeding with the same claim in two different places and the risk of inconsistent findings, and
- whether availability of the grievance arbitration would restrict access to the investigative and adjudicative machinery under the *Human Rights Code*.

The Task Force also considered other issues arising from the differences between arbitration and human rights adjudication, many of which were raised by the Ministry of Citizenship and the Ontario Human Rights Commission in its representations to the Ministry of Labour:

- the absence of representation of the public interest before an arbitrator;
- the fact that there is no appeal from an arbitrator's decision;
- the different procedural protections under both processes;
- the difficulty arbitrators might have when faced with broad human rights policy issues, systemic discrimination cases or claims requiring comprehensive investigation;
- the absence of mandatory investigation to assist the grievor under labour arbitration; and
- the fact that unions, and not individual employees, have control over what cases go to arbitration and how they are presented and that unions have been criticized for not adequately dealing with rights claims, particularly if there is a conflict within the membership.

... ensuring expertise of arbitrators ...

The Task Force believes that only arbitrators who have human rights expertise should decide grievances involving human rights issues. The Task Force agrees with those representatives of employer, unions and equality seeking groups who indicated that human rights training of those involved in the grievance and arbitration procedures is necessary for the proper handling of human rights issues.

The Task Force believes that putting protections in place to ensure the expertise of arbitrators who are chosen or named, will help to build confidence in the ability of the arbitration process to fully and fairly deal with human rights issues. Doing so will lessen the likelihood of dissatisfaction with arbitral decisions.

While many arbitrators have not had an opportunity to get a good grounding in human rights issues, a good number of arbitrators have developed human rights expertise and have decided important human rights issues under collective agreements. For example, a landmark case dealing with the obligation of the provincial government to accommodate the religious holy days of a Jewish employee was decided by an arbitration board interpreting an Ontario Public Service Employees Union collective agreement with an anti-discrimination clause.[53]

Ensuring arbitrator's have initial and ongoing training and expertise will also lead to better consistency of decisions. Otherwise, decisions may vary depending upon the extent of an arbitrator's expertise in human rights and familiarity with decisions from the Equality Rights Tribunal.

The Task Force believes that the Resource and Training Section of the Equality Rights Tribunal must play an important role in addressing these concerns. This Section will be responsible for initial and ongoing training and education of the Vice-Chairs and for their certification to adjudicate in the various equality areas. Accordingly, it is particularly well-placed to do the same for arbitrators. The Tribunal could share its expertise in developing new techniques and proper procedures for adjudication of human rights claims.

As arbitrators are entrepreneurs who charge a fee to the parties for their arbitration work, they should be charged a fee for the training and certification service.

RECOMMENDATION (21):

- **Only arbitrators who have been certified as having human rights expertise by the Equality Rights Tribunal through its Resource and Training Section may arbitrate a matter under a collective agreement which raises a *Code* discrimination issue. Initial and ongoing training and certification should be provided by this Section at a fee.**

... ensuring access to both the arbitration and *Code* procedures ...

The Task Force notes that grievance and arbitration procedures under collective agreements differ from the internal human rights complaint processes found in some non-unionized workplaces. They differ in one important respect; grievance and arbitration procedures, as part of collective agreements, are sanctioned by statute. The *Labour Relations Act* expresses society's confidence in arbitration by stipulating that all differences between the parties to a collective agreement are subject to final and binding settlement by arbitration. The *Act* also includes a mechanism for enforcing the results of arbitrations through the Courts.

Nonetheless, the Task Force is loathe to confine employees and unions exclusively to the grievance and arbitration procedure. They should have the choice of filing a claim of such a fundamental nature at the Equality Rights Tribunal. Effective enforcement of human rights demands no less.

To provide such a choice, it is necessary for all collective agreements to contain a provision that the deemed human rights clause in the collective agreement does not affect the right of an employee or a union to file a claim under the *Code*.

RECOMMENDATION (22):

- **The union and the employee should be able to file a claim either as a grievance or with the Tribunal.**

... avoiding unnecessary multiple proceedings ...

Some employers recommended that if an employee or union took a claim through the grievance procedure under the collective agreement, they should not be able to subsequently file a human rights claim on the same matter. They should have the right to choose, but once that choice is made, the union and the employee should be bound by it.

The Task Force shares the concern that unnecessary multiple proceedings be avoided and recommends the following solutions:

Before the Tribunal: Where an arbitrator has issued a decision on a human rights claim, the Tribunal, faced with a similar claim filed by an unsuccessful grievor or union, would determine at the initial hearing whether a hearing into the claim should take place. At the initial hearing, the employer would be required to show the following:

- the nature of the claim,
- that a "certified" arbitrator was appointed,
- that appropriate and fair procedures were followed by the "certified" arbitrator,
- that the "certified" arbitrator heard the evidence, and
- that the "certified" arbitrator issued a decision, which conformed with accepted Tribunal jurisprudence and remedial powers.

Once the employer has shown this, the rights claimant would indicate to the Tribunal why it should conduct another hearing into the claim. He or she would have to persuade the Tribunal, for example, that the decision was not based on proper human rights jurisprudence; or that it failed to consider relevant evidence; or that it failed to provide the full remedy an employee would have been entitled to under the *Code*. If the claimant succeeds, the Tribunal would hear the case.

Such an approach should allow speedy decisions when inappropriate duplication is involved, but allow cases that were not fully or properly dealt with elsewhere to go forward.

Furthermore, such an approach is an incentive to make sure that grievances involving human rights are handled only by individuals having the necessary human rights expertise so that the result is satisfactory to everyone.

Before an arbitrator: Where an arbitrator under a collective agreement is faced with a human rights grievance having the same subject matter as a claim that has been properly dealt with by the Equality Rights Tribunal, the arbitrator will have the power to dismiss the grievance.

RECOMMENDATION (23):

- **If a human rights claim under the *Code* has already been fully dealt with under the Labour Relations process by a certified arbitrator and in accordance with the equality guarantees and remedial relief provided under the *Code*, a Vice-Chair of the Equality Rights Tribunal may dismiss the claim.**
- **All collective agreements include a provision which would give an arbitrator under a collective agreement the power to dismiss a grievance which was brought by or on behalf of a person or the union when the person or the union had the same matter as raised in the grievance dealt with fully and properly by the Equality Rights Tribunal and there were no rights or remedies available under the collective agreement but unavailable under the *Code*.**

The Task Force carefully considered the potential conflict, in a given fact situation, between union carriage of a grievance in arbitration and the individual grievor's right under the *Code* to file a claim with the Equality Rights Tribunal. Although there exists the potential for the employer to have to appear before both, the Task Force believes that several factors mitigate against this likelihood:

- Unlike arbitration, individuals are responsible for finding representation before the Tribunal. If some of these individuals approached the Equality Rights Centres, the Centres, mindful of their limited resources, may refer them to their unions and encourage them to make full use of their unions' resources first.
- Unions would likely adjourn the grievance, in the name of conserving resources, when a grievor has filed a claim at the Tribunal.
- In cases where an employee files a claim with the Equality Rights Tribunal prior to the conclusion of the arbitration of the grievance, the Tribunal adjudicator might determine, at an initial hearing, whether a hearing of the claim prior to the conclusion of the arbitration was warranted.

...absence of an appeal...

Some concerns have been raised that the power of the Tribunal to dismiss a claim that has been fully heard by an arbitrator under a collective agreement, may unfairly deprive individuals of the right to appeal decisions to the Courts, a right which is contained in the current *Code*.

While arbitrators' decisions are final, so will Tribunal decisions be under the new system. There will be no right of appeal.

However, the Tribunal will have the power to reconsider any decision it has made.

The Task Force believes that the Tribunal's initial hearing procedure for claims that have been heard by a labour arbitrator, will extend a form of reconsideration for arbitration decisions.

...involvement of Human Rights Ontario representing the public interest ...

The Commission has suggested it should have the right to intervene in labour arbitrations dealing with human rights claims in order to protect the public interest.

The Human Rights Commission has suggested that it should be entitled to participate in labour arbitrations that deal with human rights claims in order to ensure that the public interest in promoting human rights is adequately protected.

The Task Force has considered this suggestion, but believes that such a right would unnecessarily encumber the private arbitration process.

Rather, it is more appropriate for the participation of Human Rights Ontario to be limited to claims heard by the Tribunal where public interest concerns are raised.

RECOMMENDATION (24):

- **Human Rights Ontario should only be entitled to seek to represent the public interest if a claim comes before the Tribunal and issues of public interest are raised by the claim.**

... remedial power of arbitrators...

In order to ensure that the grievance arbitration procedure can function as an effective parallel enforcement mechanism, the Task Force believes that remedial powers available to the Tribunal should equally be available to arbitrators.

RECOMMENDATION (25):

- **The *Labour Relations Act* should be amended to provide that arbitrators acting under the deemed *Human Rights Code* prohibitions in collective agreements will have the same remedial powers as those proposed for the Tribunal under the *Code*.**

... requirement to exhaust workplace human rights procedures ...

The Task Force believes that it is extremely important for employers to develop internal workplace human rights procedures to help deal with the problems of discrimination right in the workplace. The Task Force heard from a number of different employers' organizations about the work they had done in developing such internal procedures. As discussed earlier in this report, unionized workplaces have successfully used such procedures.

Some employers have recommended to the Task Force that a person should be required to exhaust the employer's internal human rights procedure before being allowed to file a human rights claim. The Task Force has a number of concerns with that recommendation:

- Internal procedures set up in workplaces vary greatly; there are no standards which they must meet. Some internal procedures the Task Force examined were unsatisfactory and involved little more than directly an employee to tell her supervisor she had a human rights claim and, if the supervisor was unable to resolve it, letting the top administrator decide the claim. Other internal claim procedures examined by the Task Force were substantial and better thought out.

- Without the benefit of a negotiated procedure and union representation, employer-run procedures using employer-chosen decision-makers intend to be unbalanced. None of the employer designed internal procedures provided the level of protection afforded by the best union negotiation procedures that the Task Force examined.

- Poorly developed procedures have little credibility among employees; may expose employees to retaliation; or may be long, drawn out, and cumbersome.

The Task Force does not believe it is fair to require an employee to exhaust, or even use an internal, employer controlled process, before having the right to file a human rights complaint.

It is the view of the Task Force that the appropriate way to encourage employees to use an internal procedure is for employers to ensure it works well. One way to increase that likelihood is to have strong involvement of members of those groups in setting up the process from the very beginning. The Task Force would like to encourage the development or internal procedures that are both effective and acceptable.

RECOMMENDATION (26):

- **In non-unionized workplaces, Human Rights Ontario should encourage employers to set up fair and effective internal procedures for the resolution of workplace human rights claims which are developed in partnership with their employees or negotiated with their unions; and**
- **Employees should have the option of using either internal workplace human rights procedures or filing a claim with the Tribunal.**

...collective agreements which discriminate...

Section 49(b) of the *Labour Relations Act* currently empowers the Ontario Labour Relations board to adjudicate complaints that a collective agreement discriminates against a person contrary to the *Human Rights Code* or the *Canadian Charter of Rights and Freedoms*. This power will be continued in the proposed section 49.1 of the *Labour Relations Act*.

It is appropriate that the Labour Relations Board will continue to effectively determine complaints under this section, and proposes no change to the Board's powers in this area.

The Task Force does recognize that where there is a claim that a collective agreement discriminates in an unintentional or indirect way or where it creates systemic disadvantage, that a claim may also be filed with the Tribunal in order to take advantage of its specialized expertise.

In light of the Labour Board's general expertise in experience, the Task Force is confident that it can work with the Tribunal's Resource and Training Section to ensure the ongoing expertise of its staff and adjudicators in the human rights area.

XVI. EQUALITY RIGHTS TRIBUNAL

Access to a Hearing

The Ontario *Human Rights Code* is legislation of almost constitutional importance, yet recent figures show approximately 96 per cent of persons filing claims under the *Code* never get a hearing. The decision whether or not to refer the case to a hearing is made by Commissioners at a closed meeting at which the person is not allowed to appear.

At its public hearings and in the submissions it received, the single, strongest recommendation made to the Task Force was for claimants to have direct access to a hearing process they directed.

The Task Force agrees with this recommendation. The Task Force believes it is unconscionable for the *Code* to give people and groups fundamental equality rights and then deny them access to a hearing to claim those rights.

RECOMMENDATION (27):

- **All claimants should have direct access to a hearing to assert their claim for equality rights.**

Need for a Permanent Hearing System

In the past, the process for hearing human rights claims has been haphazard and inefficient.

The system set out in the *Code* is as follows. The Minister appoints a panel of persons to act as members of Boards of Inquiry.[54] When the Human Rights Commission decides to refer a case to a hearing, it requests the Minister to appoint a Board of Inquiry.[55] A person or persons from the panel are then asked by the Minister to sit as a Board of Inquiry for that particular case.

This has meant that each Board of Inquiry was a separate, temporary happening. No permanent Board of Inquiry office existed to coordinate and encourage clear, consistent procedures for all boards or to organize administrative matters on a permanent basis.

Since Board of Inquiry members are only involved part-time and on a transitory basis with no certainty as to how much work they will be assigned, they usually have other full-time jobs. This causes problems in scheduling hearings with resulting unacceptable delays, as well as difficulty in building consistency, expertise and training among adjudicators.

In September 1991, for the first time, the position of Chair of the Boards of Inquiry Panel was created and is presently filled by Maryka Omatsu. Adjudicators for each case are now appointed by the Minister upon the recommendation of the Chair of the Boards of Inquiry Panel. A Board of Inquiry Office was also established, with responsibility to schedule and coordinate all Board of Inquiry matters.

The creation of this position and this office have led to significant improvement in coordinating Board of Inquiry activity. However, the position of Chair is part-time and the resources at present limited.

In a submission to the Task Force, the Chair of the Board of Inquiry Panel said the prior lack of a central agency to coordinate human rights hearings and Adjudicators has led to a lack of uniformity of procedures and awards.

It is clear that even with the relatively small number of cases referred to Boards of Inquiry to date, the unstructured, ad hoc manner of setting up human rights hearings is not satisfactory.

Under the system proposed by the Task Force, where an increased number of cases will go to hearings, a permanent panel of trained, qualified human rights Adjudicators will clearly be needed, as well as a permanent agency responsible for the hearings.

RECOMMENDATION (28):

- **The new enforcement system requires a permanent expert Tribunal.**

An Equality Rights Tribunal

The Task Force believes one Equality Rights Tribunal should hear cases under the *Human Rights Code*, the *Pay Equity Act*, and the *Employment Equity Act*. All three statutes deal with the adjudication of human rights issues of fundamental public importance to Ontarians.

The *Pay Equity Act* and the *Employment Equity Act* acknowledge systemic employment discrimination faced by women, persons of colour, Aboriginal peoples and people with disabilities. They require employers to take specific positive measures to redress the discrimination without waiting for individual claims. Similar kinds of employment equity measures have already been ordered by one Tribunal under the *Canadian Human Rights Act* in the *Action Travail des Femmes* case.[56]

In the view of the Task Force, coordination of human rights, pay equity and employment equity cases would benefit everyone.

- The parties to a discrimination claim and their advocates would have only one hearing body to deal with, which would make access simpler.
- The issues covered by the three acts overlap at times. For example, an employee who is subjected to racial harassment could file a claim under the *Code*, but might also be able to challenge the harassment under the employment equity plan, as a breach of the employer's obligation to eliminate barriers to participation. A person with a disability may file a claim under the *Code* and the employer may respond that measures in the employment equity plan to overcome barriers are sufficient as a remedy.
- If one Equality Tribunal handles both human rights and employment equity cases, it will avoid the confusion and duplication of different, separate tribunals handling the same case or issues.
- Sharing administration, expertise, personnel and resources would be efficient and cost effective and lead to more creative mediation and adjudication.

The Task Force does not believe it is practical or efficient to set up two new Tribunals, one for human rights and one for employment equity. Various individuals and groups from both the equality seeking and the respondent communities stressed the desirability of coordinating the pay equity, employment equity and human rights systems and, in particular, recommended the creation of one Tribunal. They felt this would make recourse simpler and more accessible for persons experiencing discrimination. Representatives of respondent groups favoured this as a "one stop shopping" system.

The Task Force consulted with the Chair of the Pay Equity Hearings Tribunal, The Chair of the Boards of Inquiry and the Employment Equity Commissioner concerning the possible development of a joint Tribunal. All three supported such a move, provided that the particular needs of the individual equality areas would be respected in the design of the new Tribunal. The consultation should continue on an ongoing basis, if this recommendation is accepted.

In her Statement to the Legislature on June 25th concerning the *Employment Equity Act* the Minister indicated that:

> [the government aims] to eventually bring all our equity initiatives under one combined system.[57]

Some groups and individuals expressed concern, however, that human rights cases might be marginalized in a Tribunal dealing also with major, complex employment equity and pay equity cases. Groups dealing with housing discrimination feel a particular anxiety as they see the danger of an Equality Rights Tribunal focusing on employment discrimination, because of the presence of employment equity and pay equity cases. This anxiety is underscored by the fact that the human rights system itself, in their view, has in the past demonstrated less concern and awareness for housing discrimination claims than employment discrimination claims.

Unions raised a concern that one Tribunal, dealing with other areas as well as employment, would not have sufficient understanding of the trade union perspective. Responsibility for Pay Equity Hearings Tribunal falls under the Ministry of Labour; human rights comes under the Ministry of Citizenship.

In addition, different groups are covered by the different laws. Pay equity deals with pay discrimination against women; employment equity is expected to deal with four target groups; whereas the *Human Rights Code* covers a broader range of groups who experience discrimination, such as persons who are poor, lesbians and gay men, ethnic and religious minorities, persons with a record of offences. Clearly, it is essential that an Equality Rights Tribunal deal fairly and effectively with cases of discrimination against these groups, as well as the groups that are covered under both employment equity and human rights protections.

The Task Force believes the concerns expressed are valid. However, the Task Force believes the different concerns and needs can be addressed within one Tribunal. Special care must be taken to ensure that the distinct character of human rights cases be respected. Particular attention must be paid to cases involving grounds and types of discrimination not covered by employment equity and pay equity laws.

The Task Force recommends that the position of Chair, Equality Rights Tribunal be established to have overall responsibility for the joint Tribunal and its administration. Three Associate Chair positions should then be established to be responsible respectively for human rights, employment equity and pay equity.

A panel of Vice-Chairs should be named to hear human rights, employment equity and pay equity cases. Vice-Chairs (adjudicators) would be certified to hear cases in one or more of the three areas, depending on the particular individual's qualifications. In this way, a person would not hear a human rights case, unless the individual had specific expertise to do so.

On the other hand, a person with expertise in both employment equity and human rights could be chosen to hear a case which raised both employment equity and human rights issues. It is also possible that the Tribunal could in one hearing decide a case under two or more of the statutes.

Although the system referred to throughout this report is a joint Tribunal, the structure and process the Task Force is recommending would also work effectively with a Tribunal that handled only human rights cases. (See Chart in Appendix 3-2)

If however a new joint Tribunal is set up, the Task Force believes the measures and structures it is proposing will respect the particular needs of each area, while maximizing the benefits of a shared, coordinated Tribunal. (See chart in Appendix 3-1)

The Task Force believes that it is important for the new joint Tribunal to be established with a fresh start. Given the possibility that employment equity legislation may be passed before any procedural amendments to the *Code* arising from this report, it may make sense for the new Tribunal to be set up to start dealing initially with employment equity claims and the human rights and pay equity hearing bodies could then join up afterwards.

Tribunal Advisory Committee

In light of the important role the Tribunal plays in the new enforcement system, involvement of the consumers of the Tribunal's mediation and adjudication services is very necessary.

A Tribunal Advisory Committee, representative of all the parties and interests who are served by the Equality Rights Tribunal, should monitor the working of the Tribunal and provide advice to the Chair. The Committee could provide input among other things on the development of fair and accessible rules and procedures, the operation of the Registrar's office and the Mediation Section. The Committee could also advise the Chair on matters such as criteria and qualified candidates for Vice-Chair positions. Unlike the Commission, the Tribunal is a quasi-judicial body and the Committee could not provide advice on how to deal with particular cases as this would be undue influence.

Ensure equality seeking groups dealing with grounds of discrimination and areas not covered by employment and pay equity must be properly represented on the Advisory Committee.

The Task Force recommends that a Tribunal Advisory Committee with representatives of the groups served by the Tribunal be appointed by a process acceptable to interested groups.

Appointment Process

The Task Force believes that the process for appointing the Chair and the four Associate Chairs of the Equality Rights Tribunal should be independent and credible. Since the Government is itself a major respondent appearing before the Tribunal, it is essential that the appointment process be, and be seen to be, free of any political interference.

The Task Force recommends that the Equality Rights Appointments Committee should be responsible for appointing the Chair of the Equality Rights Tribunal, the Associate Chairs for Human Rights, Pay Equity and Employment Equity and the Associate Chair, Mediation. (This

is dealt with in Section IX - Ensuring the Independence and Competence of the New Enforcement System).

The Appointments Committee will advertise the positions, the qualifications and how to apply are appropriately advertised so that they come to the attention of interested communities.

The Task Force believes that Adjudicators should be named by the Chair, in consultation with the relevant Associate Chair and the Tribunal Advisory Committee. This will allow those operating the Tribunal, who have the closest knowledge of what the needs are, to be in charge. It will also allow for the termination of an Adjudicator whose performance is found unsatisfactory, for example because of inability to hand down decisions in a reasonable and timely way.

The chair would be consulted on the renewal of the appointment of any Associate Chair.

Qualifications for the Tribunal

Given the crucial role the Tribunal will play in deciding equality rights, it is essential that qualified, competent persons be appointed.

The Task Force believes that clear job descriptions should be prepared that detail the tasks to be performed and the qualifications required.

The Supreme Court of Canada has recently noted that administrative Tribunals "can, and often should, reflect all aspects of society". The Court noted that there should not be undue concern that persons who have spoken out on various issues in the past, will not "strive for fairness and a just result", when they are called upon to decide a case.[58]

Since people of colour, people with disabilities, women, people with low incomes, have traditionally been excluded from opportunities, particularly from senior positions in administrative tribunals, training should be provided, if necessary, to enable them to qualify. A legal background should not be mandatory.

RECOMMENDATION (29):

- **The Task Force recommends that a permanent, full-time Equality Rights Tribunal be established to deal with human rights, pay equity and employment equity cases.**
- **An independent Tribunal Advisory Committee, representative of all the parties and interests who are served by the Equality Rights Tribunal, should monitor the effective operation and accessibility of the Tribunal and provide advice to the Chair**

(but not concerning specific cases). Care should be taken to ensure equality seeking groups, dealing with human rights grounds and areas not covered by employment and pay equity are represented on the Advisory Committee.

- **The Chair of the Equality Rights Tribunal should be responsible for the overall functioning of the Tribunal and three Associate Chairs should be responsible respectively for adjudication human rights, employment equity and pay equity cases.**

- **A Panel of Vice-Chairs (Adjudicators) should be certified to hear cases in one or more of the three areas on the basis of their particular expertise for one or more areas. They should be appointed by the Tribunal Chair, in consultation with the relevant Associate Chair and the Tribunal Advisory Committee.**

- **Training should be provided where necessary to encourage the recruitment of candidates from diverse background.**

Adjudication Services

The Tribunal will be divided into two major sections - the Adjudication Section to hear cases, a Mediation Section to try and resolve claims without going to a hearing. The Adjudication Section will include the Chair, the Associate Chairs for each equality area and the adjudicators (Vice-Chairs).

Chair

The Chair will preside over the Tribunal both as the senior adjudicator and the chief executive officer with the power to administer the Tribunal, choose Vice-Chairs, with input from the Tribunal Advisory Committee, assign members and preside over cases. The Chair will be responsible for consulting with the three Associate Chairs of the three equality areas to monitor that these areas are appropriately and fairly resourced.

The Chair will report annually to the Legislative Equality Rights Committee on the state of human rights enforcement as viewed from the Tribunal's perspective, and will make recommendations for required changes to policies, laws and budget.

The appointment will be for a five year period with an option to renew for a further five years. A long term of appointment will encourage strong candidates to leave other positions to take this position.

The Chair should have:

- demonstrated experience and expertise in the field of human rights. If the Tribunal were deals with all three equality issues, the Chair should demonstrate expertise in the areas which the Tribunal will be called upon to consider, namely equality of treatment in the area of human rights, pay equity and employment equity;
- demonstrated commitment to taking a proactive and innovative approach to the investigation, mediation, adjudication and enforcement of anti-discrimination legislation; and
- leadership skills to carry out the chief executive officer functions.

Associate Chairs

Associate Chairs in charge of each equality area will be appointed for a five year period with an option to renew for a further five year term.

Each Associate Chair should have:

- demonstrated experience and expertise in their particular area of responsibility,
- demonstrated commitment to taking a proactive and innovative approach to the mediation, adjudication and enforcement of anti-discrimination legislation, and
- leadership skills.

Vice-Chairs

The Vice Chairs are the adjudicators who will hear and decide the cases.

The Associate Chair for the particular area will consult with Chair and the Tribunal Advisory Committee on the criteria, as well as names of candidates.

RECOMMENDATION (30):

- **The *Code* should require adjudicators to take all reasonable steps to ensure that claims are dealt with expeditiously and fairly and that inquiry and decision-making into a claim is conducted in an understandable, straightforward and not unduly legal or technical way.**

Mediation Services

... background ...

Many groups and individuals expressed great dissatisfaction with the *Code*'s present settlement process.

Representatives of equality seeking and respondent groups said the process can be coercive and unfair. For example, claimants know, and are sometimes specifically told, that if they do not accept a settlement, which in their view is unjust, their case will be dismissed by the Commission. Since they have no other choice, they feel forced to accept the "settlement".

Often settlements involve the payment of a certain sum of money. A number of claimants felt that such settlements are offensive and unprincipled, as it appears that human rights are being bought and the serious underlying questions of discrimination are not addressed or rectified.

Members respondent groups said they sometimes accept settlements, which in their view are unjustified, because of the time and cost to them of a human rights case lasting for years at the Commission.

Representatives of both claimants and respondents said human rights officers lack training in mediation and, because they also play roles as investigators and made recommendations on cases, people have difficulty relating to them as neutral mediators.

Under the *Code* the Commission is presently required to try to settle every claim. Over half of all claims made to the Commission (55 per cent) are settled at an early settlement stage, prior to any investigation.

Some employer groups told the Task Force that this rate of settlement showed that the present system is a good one and should be kept, with a few refinements.

The Chair of the Board of Inquiry believes it necessary to have some form of mandatory settlement process to encourage settlements or withdrawal of claims and reduce the caseload burden at the Tribunal.

Representatives of community groups overwhelmingly recommended that the *Code* not require settlement be attempted in every human rights case. This view was supported by the Commission.

It appears to the Task Force that under the heavy workload faced by the Commission, the settlement process became more a caseload management technique than a process to encourage parties to arrive at genuine settlements.

... settlement services should be voluntary ...

Mediation should recognize power imbalances and should be guided by persons who understand the *Code*'s standards.

The Task Force considers that settlement of human rights claims is desirable and should be facilitated. However, it is essential in the Task Force's view, that settlements be principled, genuine and voluntary. This view was supported by the Harvard Negotiation Project which provided a report to the Task Force.

A forced "settlement" where, in the words of one employer, "you are left with a bad taste in your mouth", or as many claimants put it, you are left angry, hurt and offended, is no real settlement at all.

... mediation section ...

In order to facilitate settlements, the Equality Rights Tribunal should offer mediation services as a way of resolving human rights claims. An Associate Chair, Mediation, should be responsible for an independent Mediation Section with trained mediators. This will ensure that mediation is equally as respected as going to a hearing in the adjudication section.

Parties to a claim should be asked by the Tribunal if they have considered settlement, but the parties should have the right to refuse.

The Tribunal could also assist parties who want to resolve a rights claim before positions are written down in a claim and response.

... community mediation ...

Community mediation services that exist in certain parts of the province and meet proper standards should also be used. This would provide services closer to where people live and would draw benefit from community experience, energy and creativity. Joint training and information exchange sessions on successful mediation techniques and settlements should be regularly held between community and tribunal mediators.

... mediation process ...

The mediation process should be informal and confidential. A legalistic, adversarial approach should be discouraged. Persons involved in the mediation process could not be required to provide information at a hearing.

Mediators should be representative of the regional and cultural diversity of the province. They should be trained in mediation skills, in human rights and in cross-cultural awareness and accessibility issues.

In order to deal with power imbalances, a claimant would be entitled to the assistance of an advocate.

Time limits should be placed on the mediation process so that normally it will be completed within 45 days, with an extension possible. If the mediation proves unsuccessful, the case will be referred to a hearing.

Settlements should be registered with the Tribunal so that terms that are not respected can be enforced by the Tribunal. Settlements should be public unless the claimant requests confidentiality or the mediator considers it appropriate. Respondents should not be allowed to request a clause keeping the terms secret.

... advantages of mediation ...

The Task Force believes that mediation can be an empowering and effective way of resolving human rights claims. It also allows for confidentiality in a case where a claimant does not wish to go before a hearing, for example in a sexual harassment case.

A number of claimants said they wanted to be able to tell a respondent what it felt like to be discriminated against. They asked for a non-adversarial process which was respectful and fair. They were offended by the present settlement process, where they have no control and feel they are being "bought off".

The Task Force believes that offering mediation services, with trained and specialized mediators, will produce better results than forcing parties to go through a settlement process.

In addition, opening up access to a hearing will, in the Task Force's view, increase the number of voluntary settlements between the parties. The imminence of a hearing has often proven to be a strong incentive to settlement.

For these reasons the Task Force rejects the idea of making settlement efforts compulsory. This would, in the Task Force's view be counter-productive and, in fact, decrease the chances of successful settlement.

... settlements not approved ...

The Task Force also believes that settlements need not be approved by the Tribunal. The public interest in the sufficiency of settlements will be met by the provision of high quality mediation services, guided by the principle of achieving *Code* compliance, and a provision that any settlement could be challenged as invalid, if it was obtained through coercion or unconscionable means.

RECOMMENDATION (31):

- **An Associate Chair, Mediation, heading a separate Mediation Section of the new Tribunal should be responsible for providing mediation services to bring about fair and effective settlements of human rights claims.**
- **Use of mediation services should be facilitated, but should be voluntary.**
- **Persons providing mediation services should:**
  - **be knowledgeable about and supportive of the principles and purpose of the *Code*,**
  - **guide the parties to reach a settlement which complies with the *Code*,**
  - **be aware of and sensitive to power imbalance between the parties in a case,**
  - **be respectful towards persons who experience discrimination.**
- **Settlements in human rights cases do not need to be approved by the Tribunal but could be challenged if they were obtained by undue coercion or other unconscionable means.**

- **Persons involved in mediating claims should not be required to give information during a hearing.**

- **Information on settlements should be public, but with discretion allowing confidentiality to be protected when requested and when considered appropriate by the mediator, such as in a sexual harassment or AIDS case.**

- **Various options, such as using community mediation services, should be permitted, provided they meet the necessary standards.**

- **A time limit of 45 days should be set for completing settlement, with an extension possible if requested by both parties and the mediator believes further mediation services would be appropriate.**

- **Settlements should be registered with the Tribunal so that if the terms of the settlement are not respected, they can be enforced by the Tribunal as if they were a breach of the Act. If a person claims that the settlement was reached under duress, the Tribunal could decline to enforce the settlement.**

- **If settlement efforts are unsuccessful, the parties should have a right to a hearing before an adjudicator.**

Office of the Registrar

A Registrar will be responsible for assisting persons wishing a hearing or mediation services. Deputy registrars for human rights, employment equity and pay equity, and intake officers will work under the Registrar in the Office.

> ***... intake officers ...***

Intake officers will be highly trained, experienced staff, since they are the first point of contact for claimants.

Strong criticism was expressed to the Task Force that presently the intake officer at the Commission is a junior position and so the person does not have the necessary training or expertise to deal properly with the variety of different and sometimes new or complex issues involved in a claim.

Many people stressed that the intake officer should be one of the most experienced and skilled positions to ensure the case got started correctly. This would, in fact, save a lot of wasted time and frustration at later stages.

The Task Force agrees with this view.

... advice about community services ...

If a claimant contacts the Tribunal directly, the intake officer will advise the person of the various community advocacy services that provide assistance and support to claimants.

RECOMMENDATION (32):

- **The position of Registrar should be established with responsibility to administer the fair, accessible and effective functioning of the Tribunal.**
- **Deputy registrar positions for human rights, employment equity and pay equity should be established and trained intake officers and other staff provided.**
- **The functions of the Registrar should include:**
  - **administering the Tribunal;**
  - **administering the filing and handling of claims throughout the Tribunal process;**
  - **assigning intake staff to assist people in filing claims who would make sure the rules for the filing of responses and disclosure are followed;**
  - **responsibility for establishing case management procedures to ensure cases are moved through the system fairly and expeditiously;**
  - **general administrative responsibility for ensuring the adjudicative and settlement process is accessible to the public and particularly to unrepresented claimants and respondents and to those who are disadvantaged because of disability, literacy problems, social and economic disadvantage, cultural differences;**
  - **ensuring claims are prioritized where there are more claims to hear than adjudicators available or where there is a need to have it heard quickly, e.g. an AIDS case;**
  - **ensuring that any necessary accommodation needs are identified and met, such as the use of tapes or interpreters;**
  - **ensuring claims are served and appropriate notices, if any, are posted;**

- **reviewing claims as they are initially filed to determine if they are within jurisdiction or on their face disclose a violation of the *Code*. If they did not, the Registrar would refer the claim to an Associate Chair for a decision to dismiss. This decision could be appealed to a hearing presided over by a Vice-Chair; and**

- **ensuring claimants are advised of the various community advocacy services that exist to provide support.**

Resource and Training Services

... background ...

Until now resources and information about human rights decisions have been badly lacking. Information about decisions handed down under the *Code* has been haphazard at best and non-existent at worst. No resource centre exists where people can obtain needed information about decisions.

This lack of information works to the detriment of the equality seeking and respondent communities, the general public and the human rights system itself.

No mechanism has existed to provide consistent training for persons who investigate, settle and decide human rights cases. Such training would promote high and consistent standards for investigation, settlement and decision-making. It would also sensitize adjudicators and staff concerning human rights issues and awareness and commitment to cross-cultural and accessibility concerns.

... Resource and Training Section ...

The Task Force recommends a Resource and Training Section, headed by a Director, be established at the Tribunal.

The Section will conduct initial and ongoing training sessions for Tribunal Adjudicators. Such training will help ensure that lay persons who become Adjudicators received proper training.

The Section would also assist the Chair and the Associate Chairs determine qualifications and testing for certifying Vice-Chairs to handle human rights, pay equity or employment equity cases. The Section will train and certify adjudicators who handle human rights cases under other statutes, for example arbitrators under collective agreements.

The Section will ensure that Tribunal Officers, Intake Officers and Mediators who handle various types of equality cases are appropriately qualified and trained. It is essential that members of the Tribunal be appropriately trained both on their hire or appointment and on an ongoing basis.

The Centre should be required to operate in an accessible manner - for example, by having a TDD number, a 1-800 number and by using modern technology to ensure their information is accessible to the different regions of the province and to persons with disabilities.

RECOMMENDATION (33):

- **A Resource and Training Section should be established in the Tribunal under a Director.**
- **The resources and training provided by this Section should include :**
    - **providing access to all the decisions, information and research needed to mediate and decide equality rights disputes, not only to the Tribunal staff and adjudicators, but to everyone in the community who requires the information, such as claimants and respondents, lawyers and advocates, Equality Rights Centres, Human Rights Ontario, equality seeking groups, unions and other community groups;**
    - **providing initial and ongoing training and education for the Chair, Associate Chairs, Mediator, Registrar, Tribunal Counsel Office, Mediators, Intake Officers and Tribunal Officers;**
    - **publishing regular reports of Tribunal decisions and bulletins with easily understood summaries of the decisions;**
    - **keeping on public file copies of all claims filed with the Tribunal as a public record of discrimination issues being raised at the Tribunal, and copies of settlements which are authorized to be made public by the Mediator. If necessary, the Protection of Privacy Act should be amended to allow the complaints and responses filed with the Tribunal to be made public, subject to the claimant's consent;**
    - **maintaining statistics and other information concerning the number, nature and results of claims filed;**
    - **providing information on equality rights cases; providing initial and ongoing training for the Vice-Chairs, Mediators, Intake Officers and Tribunal Officers; and**

- **training and certifying arbitrators under the *Labour Relations Act*.**

Tribunal Counsel Office

A Tribunal Counsel Office is needed to provide legal advice to the Tribunal and legal assistance to any non-legally trained adjudicators. Tribunal counsel would be assisted by legal assistants who could review the case materials coming forward to adjudication and perform other delegated tasks appropriate to their skills.

Tribunal Counsel Office would:

- provide legal research and advice to the Chair, Associate Chairs, Vice-Chairs, Registrar, mediators, officers and other staff in their day-to-day functions;
- work with the Registrar and Tribunal Advisory Committee to develop Tribunal rules and procedures for the filing of claims, the hearing process and related procedures, practices and policies and prepare or revise practice notes and forms;
- advise the Tribunal on the issues arising in cases, rules of evidence, possible legal impact of past and potential decisions of the Tribunal and other tribunals;
- consult with mediators and Tribunal Officers on legal issues that may arise in the course of their work;
- represent the Tribunal's interests in court;
- prepare summaries of selected significant Tribunal decisions;

Adjudicators should be allowed to speak to Tribunal Counsel or other members of the Tribunal throughout the hearing process. This will particularly facilitate the use of adjudicators who have human rights expertise but may not have formal legal training or where the parties are not both represented.

The section 38(2) restriction on the ability of the adjudicator to talk to counsel and seek legal advice should be deleted to allow for a more collegial Tribunal process.

RECOMMENDATION (34):

- **A Tribunal Counsel Office should be established to provide legal advice to the Tribunal and to provide particular legal assistance to any non-legally trained Vice-Chairs.**

- **Section 38(2) of the *Code* which restricts the ability of the adjudicator to talk to counsel and seek legal advice should be deleted.**

Regional Access

The Equality Rights Tribunal should take all possible measures to make itself accessible to persons throughout the province.

Vice-Chairs who hear cases should, for example, come from every region in the province.

Although the Tribunal's main office will likely be in Toronto, hearings will take place around the province, using where possible Adjudicators who live in or are familiar with that region.

In order to maximize consistency, sharing of expertise and high standards, such regional adjudicators will receive training and spend regularly periods of time working at the central Tribunal office. Likewise, in order to increase awareness and sensitivity to the varied reality of the province, adjudicators from the central office will be sent out to hold hearings around the province.

Tribunal Officers and mediators should also come from every region of the province and steps should be taken to ensure their services are regionally accessible.

The Tribunal may enter into arrangements so that its intake functions can be handled by other persons or organizations in order to make the function more accessible to the regions and its cultures.

With technology available today where, for example, each day a newspaper can be written in one location, edited in another, and published and distributed somewhere else, it is certainly feasible and practical to schedule hearings around the province from one central office. In this way, administrative costs can be minimized and regional accessibility maximized.

The Tribunal could also adopt, where appropriate, the procedures now being used by the Supreme Court of Canada of using video-conferencing or teleconferencing to facilitate the hearing of cases where the parties are from different regions of the province.

The Equality Rights Centres, the centres of particular expertise, and the community groups funded to handle human rights claims would provide assistance to claimants to take their case to the Tribunal. They would have claim forms and easily accessible information in varied formats explaining what the *Code* is about and how claims are handled.

These agencies providing services to claimants will be located all around the province and will have ready access to the Tribunal through modern technology. More detailed information about these agencies provided earlier in this section.

RECOMMENDATION (35):

- **The Tribunal should take all reasonable measures to make itself accessible throughout the regions of Ontario, such as having cases heard around the province and choosing adjudicators, mediators and officers, some of whom live in the regions.**
- **The Tribunal should make use, where appropriate, of modern technology including computers, video-conferencing and teleconferencing in order to maximize accessibility and minimize cost.**

Staffing

Employment equity considerations in staffing should be a priority and should include all groups covered by *Code* and not just *Employment Equity Act* groups. Staff should also be representative of Ontario's regional diversity.

The Task Force believes many people currently working for the Commission are qualified or could be trained to take on positions in the new Tribunal. Many of the skills required by Commission staff will be needed in the Tribunal.

The Task Force believes it is essential that the Commission staff are given this opportunity and that the new Tribunal be covered by the Ontario Public Service Employees Union's collective agreement so that they do not lose the important collective bargaining rights they currently have.

RECOMMENDATION (36):

- **Staffing of the Tribunal should take into account employment equity considerations including all groups covered by the *Code* and not just those in the *Employment Equity Act*.**

- **Current Commission staff should be provided with training, where appropriate, to allow them to qualify for positions in the Tribunal.**

- **The new Tribunal should be covered by the Ontario Public Service Employees Union public service collective agreement.**

Procedures and Powers of the Tribunal

The Task Force notes that there is always tension between the need to develop rules to make procedures clear and the problem that such rules may become too complex and act as a barrier. There is a fine line to draw and the Tribunal will be assisted by its Advisory Committee to recognize specific barriers and address them.

... procedural rule-making power ...

The Pay Equity Hearings Tribunal has very clear published rules and procedures which were developed in conjunction with the community it serves and are re-evaluated every year with that community. These rules are also provided in a plain language format with pictures.

Currently there are no published rules for the Boards of Inquiry and there is no provision in the *Code* which provides for a common set of rules to bind all the temporary adjudicators. These adjudicators have long called for a set of rules to ensure more even-handedness and predictability and less misunderstanding.

Tribunal procedures should be developed to make hearings understandable, expeditious, and less formal. This is necessary to meet the needs of people who will come before the Tribunal, some of whom may be unrepresented or represented by lay advocates.

The Chair and the Registrar should consult with the Tribunal Advisory Committee on the formulation of rules and accessibility issues.

The Office of the Boards of Inquiry has prepared a working Guidelines Practice for the current panel of ad hoc adjudicators.

The *Code* should be amended to provide that the Tribunal has the power to make all necessary rules instead of being bound by more complex general rules covering most Tribunals.[59] The Tribunal should have the power to make its own rules to suit the nature of its unique decision-making. The specific procedural powers covered by the Workers' Compensation Appeals Tribunal would be very relevant to consider.[60]

RECOMMENDATION (37):

- **Tribunal procedures should be developed to make hearings understandable and less formal in order to meet the needs of the persons who will come before the Tribunal, some of whom may be unrepresented.**

- **The Tribunal must have the power to make rules and procedures required to fairly, expeditously, and effectively decide human rights cases.**

Inquiring Active Adjudication

The Task Force heard from many that they wanted the hearing process to be less legalistic and more comfortable for claimants.

The adjudication process at the Tribunal will have a non-traditional consumer orientation. The adjudicators will be required by the *Code* to be active inquirers into the real substance and merits of the case rather than just sitting and listening.

An active inquiring approach is necessary for the adjudication of human rights claims, where claimants are often disadvantaged and proof of discrimination is sometimes difficult to bring forward. Such an approach is used at the Workers' Compensation Appeals Tribunal. It allows the Tribunal to assist its consumers - the parties - to understand the hearing process and to come forward with the necessary evidence.

An inquiring adjudication approach, combined with informal procedures, will assist unrepresented parties and lay advocates to appear at the Tribunal.

... mandatory disclosure rules ...

Parties should be required to provide each other with the material facts on which they rely in a case and with the documents which are relevant to deciding the case. Failure to comply with this requirement should have consequences. Officers would assist parties to ensure disclosure happens in timely fashion.

... tribunal power to order production of information and compelling of witnesses ...

The Tribunal needs to make its decisions on the basis of the necessary information. The Tribunal should have the power to order anyone to attend the hearing and to bring documents or testify.

... ability to order investigation by Tribunal Officers ...

Under the proposed new system, there will no longer be a mandatory requirement for the Human Rights Commission to investigate every human rights claim. A public investigation would only occur where an Adjudicator thought it was appropriate and necessary in order to properly hear the claim on its real merits.

This might occur where the process of informal investigation conducted by the parties and the results of the mandatory disclosure rules had not provided sufficient evidence.

Similarly a Labour Board procedure, once the Tribunal Officer completes the investigation, a report of its results go to the adjudicator and the parties.[61]

Ordering a Tribunal Officer investigation could also be used where the adjudicator wished to delegate to the Tribunal Officer the hearing but not deciding of some evidence. For example, in a case where a landlord has been ordered to compensate a tenant for her losses as a result of being denied accommodation, the Adjudicator could ask the Tribunal Officer to ascertain the facts.

The *Code* should clearly provide for the necessary broad powers of the Tribunal Officers or other authorized person to investigate and inquire into any claim.

These are similar to the powers given to Review Officers under the Pay Equity Act[62] and to officers under the new *Employment Equity Act*, s.22(1).

As investigation will normally be ordered by the adjudicator, a quasi-judicial officer. There should no longer be any necessity to get a warrant under the *Code*, if the respondent objects to the producing the information.

RECOMMENDATION (38):

- **The Tribunal should be required to base its decision upon the real merits and justice of the case. It will not be bound to follow strict legal precedent but shall give a full opportunity for a hearing.[63]**
- **The Tribunal Officer or other authorized person should have the power:**
    - **enter any place at any reasonable time and post any notice at such place;**
    - **request the production for inspection of documents or things that may be relevant to the carrying out of the duties;**

  - **upon giving a receipt therefore, remove from a place documents or things produced so long as they are promptly returned; and**

  - **question a person on matters that are or may be relevant to the carrying out of the duties subject to the person's right to have counsel or some other representative present during the examination and.**

- **Failure to comply with this requirement should have consequences. Officers would assist parties to ensure disclosure happens in timely fashion.**

- **The Tribunal adjudicator shall have the power to order a Tribunal Officer to conduct any necessary investigation in order to ensure that the case is heard on its real merits or in order to delegate to the Officer the hearing of any evidence. A warrant should not be required.**

- **The Tribunal Officer would then provide a report on the investigation results to the adjudicator with copies to the parties.**

- **The Tribunal adjudicator should have the power to compel evidence through a summons to appear or bring documents.**

Expedited Hearings

The Task Force believes the Tribunal should be able prioritize claims and to respond to the requests of parties for an issue to be dealt with on an emergency or expedited basis. An example of an emergency might be where Black and Jewish community organizations have learned that a white racist organization intends to hold a public Klu Klux Klan meeting. Such organizations should be able to apply to the Tribunal for an immediate hearing to prevent the meeting from taking place if such meeting would violate the *Code*.

This could also apply to situations where a person complains they have been improperly discharged, evicted, denied housing, denied an essential service or otherwise penalized contrary to the *Code*.

The Quebec Charter of Human Rights and Freedoms has such a provision:

> Emergency measures
> 81. Where the commission has reason to believe that the life, health or safety of a person involved in a case of discrimination or exploitation is threatened or that any evidence or clue pertaining to such a case could be lost, it may apply to a tribunal for any emergency measure capable of putting an end to the threat or risk of loss.

Measures such as this would serve to establish the credibility of the Tribunal to deal with equality issues in a way which recognizes the immediacy of the consequences of discrimination and the need to have a prompt and effective public response.

RECOMMENDATION (39):

- **The Tribunal shall have the power to hold an emergency or expedited hearing on short notice, where necessary, to ensure the proper protection of a claimant's human rights.**

Power to Assign One or more Adjudicators

The Tribunal should be able to assign one or more adjudicators to the hearing of a case depending on their skills and background. Only adjudicators who are certified in an equality area will be allowed to adjudicate in that area. An adjudicator may be certified for more than one of the areas.

This would also allow the assignment of two adjudicators - one who is experienced (either legally or in human rights) and one who needs further experience This is a practice used successfully by the Social Assistance Review Board to ensure proper training and to encourage the interchange of ideas between those of different backgrounds.

Another reason for assigning more than one Chair is that often the acceptance of an important decision will be greater if there is more than one person hearing it and also Chair can receive additional input from other members with a broad base of experience to draw upon.

This process might also allow the Chair to bring in outside part-time adjudicators who might provide an important perspective for a particular case.

With a flexible power in this area, the Pay Equity Hearings Tribunal could continue, if it wished, to have its present tripartite system of assigning a Vice-Chair and an employee representative and an employer representative on each panel.

However, the Task Force believes a tripartite system is not appropriate in the human rights field and would be costly and inefficient. This view was supported by most of the Tribunal Chairs that the Task Force consulted. It is also not clear who any members would represent in the human rights context.

To ensure timely and fair adjudication of claims, the Task Force believes that the vast majority of cases should be heard by one adjudicator.

RECOMMENDATION (40):

- **The Tribunal should be able to assign one or more adjudicators to the hearing of a case depending on their skills and background.**

- **The *Code* should be amended to provide that the Chair not the Minister could decide to assign one or more Vice-Chairs to sit on a case depending on the type of case and its importance.**

Initial Hearings

An important feature of the new Tribunal system is the initial hearing which should take place within 45 days of filing claim.

The adjudicator who is assigned to the case would hear and decide the following matters:

- sufficiency of the disclosure which had taken place as a result of the mandatory disclosure in the rules. Parties could be ordered to make further productions within a specified time frame;

- dealing with motions to dismiss by a party or a Tribunal because of lack of jurisdiction, delay, failure to disclose violation on face of claim, or referral to other jurisdiction, or because adequately and fully dealt with by another authorized statutory procedure;

- request for an interim order pending the decision;

- request by a party or a Tribunal for the Officer do investigation where necessary;

- ascertain any areas of agreement and try to narrow the issues which need to be litigated;

- determine whether any other parties should be added or motion by equality group to appear as Intervenor;

- determine the order parties will call evidence; and

- determine the number of hearing days requested and schedule them.

RECOMMENDATION (41):

- **Parties to a claim will have an initial hearing before the adjudicator assigned to their case within 45 days from the date of the filing of the claim in order to decide all the**

preliminary matters which are necessary to prepare for the full hearing of the case. Such matters would include requests for a preliminary dismissal for lack of merit: for further disclosure or investigation; or for an interim order.

Time Limits to be Imposed on Process

The Task Force believes it is essential to ensure that the unconscionable delays under the current system are avoided at all costs in the new system. Mr. Justice Reid in his research paper for the Task Force called strongly for effective time limits with consequences for their breach.

While the imposing of fixed time limits is important, the Task Force also realizes that the amount of time necessary to decide cases may vary for a number of reasons. Simple individual complaints may be completed quickly while systemic cases may take many months. It is important that the time limits in the *Code* are flexible enough to recognize this diversity in cases.

In order for the Tribunal to deal with its caseload and to ensure that everyone is given hearings in a timely fashion, it is necessary that the adjudicator be given the power to conclude a hearing in as expeditious and fair a manner as possible given the complexity of the case. This will allow the Tribunal more control to ensure the Tribunal's resources are conserved, if appropriate and consistent with the fair hearing of the case.

The Task Force believes it is essential that the *Code* should require that an initial hearing into a claim should take place within 45 days after the claim is filed. After that, the adjudicator would be directed by the *Code* to ensure the hearing process is concluded in a fair and timely fashion. The adjudicator shall normally give a decision within 30 days after hearings on the claim are concluded.

These time limits could be extended on consent of the parties or in the discretion of the adjudicator so long as the adjudicator states in the decision the reasons for extending the time[64]

An adjudicator may also give an oral decision if appropriate to expedite the process.

If a decision is not given within the prescribed time, the Associate Chair may make such orders as are necessary to ensure the decision or reasons will be given without undue delay.

RECOMMENDATION (42):

- **The *Code* must be rewritten in a way that introduces effective time limits for the hearings process and gives to those, in whose favour they run, the means to enforce them.**

- **Claims should receive an initial hearing within 45 days after the claim is filed and the decision should be released within 30 days after the end of the hearing.**
- **The Adjudicator should have the power, where appropriate, to direct the hearing process so as to conclude a hearing in a fair and expeditious fashion.**
- **The Associate Chair shall have the power to order an adjudicator to comply with the time limits for making a decision, but may extend those time limits if appropriate.**

Full Hearing

The full hearing into a case will likely take place approximately 15 days after the initial hearing. This hearing will hear all the evidence from the parties and any investigation report from the Tribunal Officer. The parties will then make submissions about whether the evidence supports a violation of the *Code*. The adjudicator will consider the evidence and submissions and make a decision and order a remedy if appropriate.

Who Should be Part of a Hearing Process

... parties ...

A party has the right to attend the hearing, be represented, call evidence and make representations. A party is also bound by the decision of the Tribunal. The Task Force believes that people who are directly necessary for the proper determination of the case should automatically be made parties.

RECOMMENDATION (43):

The *Code* should provide that the necessary parties to a claim are:

- **the claimant or the person or organization representing them;**
- **any person the claimant alleges has infringed a right under the *Code*;**
- **any person who appears to the Tribunal to have potentially infringed the right;**
- **any person, who in the Tribunal's opinion, had the authority or legal obligation to penalize or prevent the conduct complained of; and**

- **where the collective agreement is at issue, the trade union ...**
- **any other person directly necessary for the proper adjudication of the claim.**

- **A party may be added by the Tribunal at any stage of the proceeding upon such terms as the Tribunal considers proper.**

... intervenors ...

Intervenors are persons or groups who do not have the automatic status of parties, but who have been permitted to participate because of their particular interest in or connection with the claim that is being adjudicated. Intervenors may be given the full participation rights of a party, (the right to call, and examine witnesses, the right to bring other evidence), or they may be given limited rights such as "Friends of the Tribunal", to have oral and written submissions.

RECOMMENDATION (44):

- **Human Rights Ontario should have the right to intervene with full participation rights to represent the public interest in any case involving the public interest, unless the Tribunal decides it is established that allowing the Commission to have standing would unduly hinder or delay the fair hearing of the case.**
- **Appropriate intervenors or friends of the Tribunal, such as equality seeking groups, should be granted intervenor status in the process if they have a sufficient interest in the claim; are able to provide helpful assistance to the Tribunal in reaching its decision, and their presence would not unduly lengthen the hearing.**

Necessary Powers

... exclusive power to decide all questions of law and fact ...

The power to decide all questions of law or fact will ensure the Tribunal can consider Charter issues relevant to its jurisdiction.

RECOMMENDATION (45):

- **The Tribunal should have the exclusive jurisdiction to exercise its power to determine all questions of fact or law that arise in any matter before it.[65]**

... listen to non-traditional evidence ...

RECOMMENDATION (46):

- **The Tribunal should be able to accept any evidence which it believes is reliable and relevant whether it is allowed as evidence in a court or not.**

... interim orders ...

There needs to be a specific provision in the *Code* which allows the Tribunal to order interim relief where appropriate. This might be an order to an employer that they cant discharge an employee or a landlord can not rent an apartment until a hearing is held. An expedited hearing would then be ordered.

RECOMMENDATION (47):

- **The Tribunal shall have the power to make any interim order where appropriate.**

... successor rights provision ...

This is of significance when a business is sold and there is an outstanding human rights claim under the *Code*.[66] Should the successor owner be liable in any way? A suggestion to bind such owners came forward from the consultation with the Office of the Boards of Inquiry with the current adjudicators. The Task Force believes that the need for such a provision will vary with the circumstances surrounding the sale or transfer of a business; with the nature of the claim; and with the person or business against which it is directed. This means the Tribunal must be flexible.

RECOMMENDATION (48):

- **The Code should ensure that, where a business is sold, the Tribunal have the discretion to add successor businesses as necessary parties and to make any necessary order against them to ensure Code's purpose upheld.**

... communication of information ...

RECOMMENDATION (49):

- **The Tribunal should be able to order respondents to communicate necessary information and bring to the attention of appropriate persons connected to the case. Such communication should be done by posting a copy of the document in prominent places in each workplace or otherwise communicating it in a manner which may be understood by all concerned.[67]**

... amendment to join claims ...

RECOMMENDATION (50):

- **The Tribunal should be given explicit power to bring together a variety of claims to be heard jointly if that is considered strategic, fair and necessary to avoid undue duplication of evidence.**
- **The Tribunal should also have the power to amend claims so that the case is heard on its merits.**

... tribunal to have power to seek advice of experts ...

RECOMMENDATION (51):

- **The Tribunal should have the power to seek legal advice, consult its own experts as appropriate without restrictions contained in s.38(2).**

... recording of evidence and transcript requirement ...

RECOMMENDATION (52):

- **In light of informality of the process, and the elimination of a full appeal right, there should be no requirement to record evidence.**[illegible]

... power to refer issue to commission for study and report ...

Giving the Tribunal a power to refer an issue to the Commission for inquiry and report would allow the Tribunal to identify for inquiry issues which it believes need to be addressed by way of either substantive changes to the *Code* (eg. where case is dismissed because of *Code*'s substantive limitations) or by other proactive measures.

RECOMMENDATION (53):

- **When dealing with a case or otherwise, the Tribunal should be able to refer an issue to the Commission to study and report on.**

XVII. ***HOW THE NEW CLAIM SYSTEM WORKS***

For Individual Claimants

Individuals wishing to make a rights claim will contact the Equality Rights Centre in their area, or a person or organization of their choice, in order to get help and advice.

The existence of the Equality Rights Centres will be widely publicized. Community groups, community information centres, libraries, legal aid and law offices, government offices, and other public services will be given information on where the Centres are located, what they do, and how to contact them. They will be asked to post flyers about the Centres and to have the information available in alternate media.

Groups who experience discrimination will be targeted and provided with information about the Centres and how to reach them.

The Centres will be clearly listed in the phone books in the area they serve; for example, they might be listed both under Equality Rights Centres and under Human Rights Services.

The Centres will be accessible to people throughout their region by a 1-800 number.

In addition to the Centres, certain community groups (called human rights partners) and community legal clinics may be funded to provide assistance to claimants.

Individuals will also have the option of getting their own lawyer, applying for a legal aid lawyer, or obtaining assistance from a community group.

An advocate with human rights expertise at the Equality Rights Centre, or the group or lawyer contacted by the individual, will provide advice as to whether the claim comes under the *Code*. If so, the advocate discuss with the claimant the nature of the claim, what supporting evidence exists, what the claimant wants as a remedy, and how the claimant wants the claim resolved.

The advocate will discuss the strengths and weaknesses of the claim with the claimant. She or he will provide advice on the different options available and the results that are likely to be achieved.

If the person wants to try to settle the claim without going to a hearing, the advocate may do one of two things: initiate settlement discussions herself with the respondent or through a community mediation service; or contact the Mediation section at the Equality Rights Tribunal in order that informal mediation may be attempted either by sending out a trained mediator, or by using regional mediation services that have been recognized as meeting proper standards. An alternate approach to dispute resolution can also be used, if the parties so choose.

If settlement is not possible, the advocate will provide assistance for the claimant to take the claim to the Equality Rights Tribunal for a hearing.

All Equality Rights Centres and partner groups will have fax machines and computers with modems in order to have immediate access to the Equality Rights Tribunal both to send and receive documents. They will have claim forms, information leaflets, and a variety of resources to inform and assist people in taking forward human rights claims to the Tribunal. Leaflets will include information on what kind of information is typically required at a hearing; what a hearing is like and how it works; and what kinds of evidence are usually looked for in cases involving, for example, sexual harassment, denial of rental, and discrimination in service provision.

Community legal clinics, legal aid offices, and community groups will also have claim forms and the ability to access the Tribunal.

The nature and extent of the support will differ according to the complexity and seriousness of the particular claim. Most claims will be represented by lay trained advocates (paralegals). Lawyers may handle more complex cases.

In a straightforward case, the advocate will assist the claimant in drawing up and signing the claim, will serve the claim on the respondent, will arrange for discovery and disclosure, and will contact the Tribunal to arrange for a hearing.

In an urgent situation, the advocate will contact the Equality Rights Tribunal for a hearing to be scheduled as quickly as possible and an order made. If necessary, a fuller hearing can be scheduled at a later date.

At the hearing, the advocate will argue the case on behalf of the claimant.

A claim made by an individual can, in fact, raise issues of broad, systemic discrimination. If the claim is complex and needs further investigation, the advocate will arrange for an initial hearing and ask the Tribunal human rights adjudicator to order further, specific investigation to be carried out by an officer of the Tribunal. An appropriate date will be set for the full hearing of the case once the investigation is complete.

If, at any time, the claimant and the respondent wish to settle the claim, the advocate will assist the claimant in achieving a proper settlement.

A claim will be dismissed, in, at most, three ways. First, in the Equality Rights Centres, an advocate and, if necessary, the advocate's supervisor will tell the claimant that the claim is without merit. If the claimant persists, the advocate will assist in filing the claim but will not represent the claimant. Second, in the Equality Rights Tribunal, if the Registrar cannot informally convince the claimant that the claim is without merit, the Associate Chair responsible for the Adjudication Section will formally advise the claimant. Third, and only if the claimant does not heed the Associate Chair's advice, an initial hearing be held at which an Associate Chair will render a decision as to whether the claim is without any merit.

For Group Claimants with Systemic Cases

If an equality-seeking group wishes to have a claim of systemic discrimination go forward, it has a number of options for initiating the claim.

If the claim is a major claim of systemic discrimination and the group is already overwhelmed by a variety of critical issues, it can ask Human Rights Ontario to initiate the claim, particularly if it is a major claim of systemic discrimination.

A second option is for the group to ask an organization with special expertise in the particular kind of discrimination involved to initiate the claim. Another option is for the group to take forward the claim itself, in a third-party claim.

A number of options are also available for how best to pursue the claim. The group may have legal advocates and resources of its own to pursue the case or it may wish to request the assistance of an Equality Rights Centre or the organization with special expertise in the area.

Another option is to request the Equality Services Board to provide special project funding from the Significant Case Fund to enable the group to take forward the case as an important test case with potential to significantly advance the rights of all members of the disadvantaged group.

Using the resources it has chosen, the group will prepare the case, obtain as much supporting evidence as possible, and arrange for discovery and disclosure to take place.

The group will then contact the Tribunal for a hearing. This can be done either directly, if the group has claim forms, or through an Equality Rights Centre or community partner.

If necessary, the group will ask a Tribunal human rights adjudicator to order that further investigation be carried out by a Tribunal Officer or ask the adjudicator to arrange for further discovery and disclosure to take place.

For Claimants Challenging Equality Initiatives

Claims are sometimes made by individuals and groups, attacking equality efforts to help disadvantaged groups. For example, a man can allege that a self-defence course for women, or a therapy counselling session for women, denies him his equality rights.

The *Code* already clearly states that special programs, designed to "relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity,"[69] are permissible.

In addition, as the Task Force has recommended in this report, the preamble to the *Code* should be amended to make clear that its purpose is to overcome historic and present widespread disadvantage and discrimination experienced by certain groups. A claim that attacks a genuine measure directed at achieving equality rights would therefore be outside the *Code*.

An Equality Rights Centre that is asked to assist an individual or group wishing to make such a claim will act in the same way as for any other claim that, in its view, falls outside the *Code*. (See the subsection *For Individual Claimants* above).

For the Human Rights Ontario Claimant

Human Rights Ontario will be able to initiate claims of systemic discrimination, using its own staff to research and develop the case and represent it at the hearing. It will also have its own powers to investigate and compel production of documents.

Additional information may be obtained by means of the discovery and disclosure process. In addition, at an initial hearing before the Tribunal, Human Rights Ontario will ask the adjudicator to order that whatever further investigation is needed be carried out by a Tribunal Officer.

At a later full hearing, its lawyer or advocate will argue the case on behalf of the public interest.

For Respondents

When an individual or organization is informed of a claim alleging that they did not respect a person's right to equality under the *Code*, the individual or organization will be able to contact the Compliance Services Unit at Human Rights Ontario.

The Compliance Services Unit will have clear, up-to-date, easy-to-understand information on what the *Code* requires and how the *Code* is enforced. Leaflets and alternate media will provide information in a non-legalistic, non-adversarial manner on what is required in the different areas covered by the *Code* (employment, services, housing, membership in unions and professional associations), as well as on the different kinds of discrimination that occur (racial discrimination, discrimination against people with a disability, and so on.)

The Unit will also have information on the different resources available, how they can be accessed, and how they operate. For example, the person will be able to obtain information on the mediation services offered at the Tribunal, as well as on how the hearing process works.

Before being named respondents, individuals and organizations can deal proactively with a human rights matter that they believe may be raised against them. Two options in the human rights system are available to them. They can contact either the Equality Rights Centre assisting the potential claimant or the Equality Rights Tribunal's Mediation Section. They can ask the Centre assisting the potential claimant if an informal process can be adopted to resolve the matter and eliminate the need to file a claim. Alternatively, they can ask the Mediation Section to provide informal mediation services. This Section will either provide the potential parties with a trained mediator or refer them to approve community-based mediation services. By pursuing either option, potential respondents and, indeed, potential claimants may be able to avoid adjudication altogether or, at a minimum, resolve some issues before they adopt entrenched legal positions.

Once a claim is filed, respondents will receive from the Tribunal Officer assigned to the claim

- information on the Mediation Section if they did not use it prior to the filing of the claim,
- information on the adjudication process, and
- information on the Tribunal's disclosure requirements.

The Tribunal Officer will ensure that respondents and claimants are prepared to proceed quickly at both the initial hearing and the full hearing.

XVIII. REMEDIES AND MONITORING

A Call For Stronger Remedies

Many submissions the Task Force received called for stronger, more effective human rights remedies. People expressed anger that many settlements in human rights cases are the payment of a token amount of money.

The Task Force was told that, when a case goes before a Board of Inquiry, the decision often does not come close to compensating the victim of discrimination for her or his true costs, losses, and suffering. For example, in cases where a person has lost his or her job because of sexual harassment or racial discrimination, the remedy is usually payment of lost wages, not also reinstating the worker in a work environment freed of sexual harassment or racial discrimination.

People recommended that greater emphasis be placed on ordering the respondent to take proactive measures to remove group disadvantages and thus deal with the underlying discrimination, rather than focusing only on individual compensation.

The Task Force was told that the *Code* should be amended to make clear and specific the remedies that can be ordered so as to prevent unnecessary cases from going forward concerning the meaning of the *Code*'s general remedy powers and to make clear to respondents the extent of their obligations.

The Task Force believes the *Code* should reflect the Supreme Court of Canada's strong call for the fashioning of human rights remedies that are able to "strike at the heart of the problem,to prevent its recurrence and to require that steps be taken to enhance the work environment."[70]

RECOMMENDATION (54):

- **The *Code* should be amended to clarify that a Tribunal has a broad and powerful remedial power to strike at the heart of the problem to overcome discrimination. This includes the power to fully compensate an individual claimant as well as to order specific proactive measures to overcome discrimination faced by groups.**

Proper Remedies for Hurt to Self-Esteem Caused by Discrimination

The *Code* places strict limits on when compensation for mental anguish can be awarded. The discrimination has to have been engaged in "wilfully or recklessly," and a maximum of $10,000 is allowed for compensation.[71]

The members of the Task Force personally witnessed the extreme pain and anguish experienced by persons with claims of discrimination. Many stated they had suffered serious damage affecting the rest of their lives.

Remedies under the *Code* do not adequately recognize the emotional and psychological harm done by discrimination. Damage to a person's self-respect causes serious hurt and harm. The Task Force was told that a woman who is denied housing for herself and her children because she is on welfare (and therefore considered an undesirable tenant) suffers not only practical problems of finding shelter, but also mental anguish and hurt to her self-esteem. The same is true of the employee of colour who is subjected to racial harassment or the job applicant who is rejected as incompetent because she has a disability.

The Task Force believes that discrimination, in and of itself, usually causes mental anguish and harm to a person's self-esteem, and that a proper remedy should, as a standard practice, provide compensation for such damages.

The *Code*'s present failure to recognize the seriousness of the personal harm caused by discrimination increases the anguish experienced by the individual. The amount of time, stress, and energy the claimant has to devote to pursuing a claim also often goes unrecognized and uncompensated.

It is ironic that people responsible for the discrimination in discrimination cases are commonly paid their regular salary for their time and presence during the investigation, settlement, and hearing process. The claimant is almost always not.

The Task Force believes that the *Code* should allow an adjudicator to order compensation for mental anguish in all cases of discrimination. Therefore, the requirement that the discrimination be "wilful" or "reckless" should be removed. Likewise, the $10,000 limit should be removed.

The true amount of harm caused by discrimination should be recognized and compensated just as under other laws. People suffering the anguish caused by discrimination should not be treated differently than in the civil courts where there is no limit to the damages amount. The amount of the compensation for anguish should depend on the facts of the case.

If the discrimination is found to be wilful or reckless, this finding should be reflected in an increased monetary award.

RECOMMENDATION (55):

- **Compensation for mental anguish should be provided to victims of discrimination. The restriction that allows such compensation to be paid only in cases where the infringement has been engaged in wilfully or recklessly should be removed.**

- **The $10,000 limit for an award for mental anguish should be removed, allowing the amount of the award to depend on the facts of the case.**

Proactive Remedies to Overcome Discrimination

The Task Force believes that the focus of the *Code*'s remedies section should be reoriented to recognize the importance of redressing group discrimination. Dealing with the situation of the individual claimant is important, but if this is all that is done, little progress will be made in overcoming discrimination.

Most human rights claims never make it to a hearing at all, and thus rarely does a settlement go beyond the individual concerned to include any significant measures to deal with the underlying problem of discrimination.

Consequently, it is only when a case is referred to a Board of Inquiry that any real opportunity exists to address discrimination in a significant, remedial manner. Under the *Code*, the focus of Board of Inquiry is, however, individualistic and adversarial. When a claim is referred to a Board of Inquiry, the Board holds a hearing "to determine whether a right of the claimant under this *Act* has been infringed" and "to determine who infringed the rights." The Task Force believes that the *Code* should be amended to reflect the positive, remedial character of human rights legislation, as set out by the Supreme Court of Canada.

The Tribunal should determine whether the respondent took positive measures to implement the right of the group in question to equal treatment and whether the particular claimant received the positive right to equal treatment.

The present powers of a Board of Inquiry as defined in the *Code* are quite broad. The *Code* says that the Board may "direct the party to do anything that, in the opinion of the board, the party ought to do to achieve compliance with this *Act*, both in respect of the claim and in respect of future practices."[72] However, the power to order a change in future practices to overcome discrimination in a significant way is rarely used.

In the view of the Task Force, it is essential that remedies under the *Code* include positive measures to achieve equality rights. For example, in a case of racial harassment, the remedy should not only provide restitution to the claimant, but also require the respondent to take specific positive measures to ensure that a workplace, service, or accommodation is free of racial harassment or other discrimination.

The *Code* should specifically state that among the remedies that a Board may order are accommodation equity and service equity plans or audits, as well as employment equity plans for those groups not covered by the new *Employment Equity Act*. These plans are more fully discussed in Section XXII, Proactive Role for Employers, Accommodation and Service Providers."

A monitoring mechanism should be built into any remedy to ensure that it is properly and effectively carried out so as to achieve its purpose. The enforcement of the remedy should not be left up in the air or it will not be taken seriously. Nor should the claimant or advocacy group have to take on the only responsibility for getting the remedy enforced. The order can stipulate that the respondent must provide periodic reports to the Tribunal Officer on carrying out any ongoing compliance issues. This requirement for a monitoring mechanism can also be incorporated into settlements that are to be enforced by the Tribunal.

If a remedy is not properly implemented, or is not successfully achieving its purpose, the case should be returned to the Board for reconsideration and a stronger, more effective order.

The cost of implementing and monitoring an equity plan or another remedy should usually be borne by the respondent. In this way, the respondent will be responsible for the costs caused by the discrimination and will also have an incentive to comply promptly and effectively with the order so that monitoring costs will be minimal.

The monitoring will usually be done by the Tribunal Officer who is assigned to and familiar with the case and the parties. The Tribunal Officer can report back to the adjudicator who ordered the remedies if there is a problem with enforcement.

Remedies should also include education and training in human rights. For example, in a racial harassment case, an employer might be required to hold anti-racism training sessions for all staff and supervisors, and to post notices informing people of the anti-racism policies, how to get more information, and how to make a claim.

RECOMMENDATION (56):

The *Code* should

- **require the Tribunal to determine whether the respondent took positive measures to implement the right to equal treatment and whether, in particular, the claimant received the positive right to equal treatment;**

- **state that remedies under the *Code*, in addition to individual redress, should include positive measures to achieve equality rights;**

- **specify that among the remedies that may be ordered are accommodation equity and service equity plans, audit plans, and employment equity plans for those groups not covered by the *Employment Equity Act*;**

- **state that an independent monitoring mechanism should be built into any remedy requiring monitoring to ensure that it is properly and effectively carried out; and**

- **allow the Tribunal to order a respondent to pay for the costs associated with carrying out the remedial order and any necessary costs of the Tribunal in monitoring the order.**

Order to Cease and Desist from Discriminatory Practices

Along with the power to order positive measures, the *Code* should explicitly allow the Tribunal to act quickly and effectively to stop discriminatory practices, such as harassing employees because of their sexual orientation.

Unlike the current *Code* provision, the *Pay Equity Act* directly allows the Tribunal to "order a party ... to refrain from an action as in the opinion of the Hearings Tribunal is required in the circumstances."[73]

RECOMMENDATION (57):

- **The *Code* should be amended to clarify that the Tribunal has the power to act quickly and effectively to order a party to stop discriminatory practices or actions.**

XIX. RECONSIDERATION AND ENFORCEMENT OF TRIBUNAL DECISIONS

Reconsideration of Tribunal Decisions

It was brought to the attention of the Task Force that opportunity must be given to the Equality Rights Tribunal to reconsider its decisions, where necessary. Such a need could arise in two ways either a party or the Tribunal may wish that a decision be reconsidered.

Currently, the *Code* does not provide for reconsideration. Rather, parties have a right to appeal decisions of Boards of Inquiry to the Ontario Court of Justice (Divisional Court).[74] In practice, this is unusual. Normally, there is no appeal from decisions of expert tribunals, the rationale being that courts lack the expertise to deal appropriately with the difficult questions of law and policy that arise in a policy area. Allowing expert tribunals to reconsider their decisions provides an opportunity for another look at a decision, somewhat like an appeal process.

The following describes the usual relationship between expert tribunals and the courts. Expert tribunals provide open access to a full hearing. They are given the power to reconsider their decisions. These decisions are then protected from court interference or second-guessing by clauses in the tribunal's statute that state that decisions are final. Court review can then only occur when a party is able to prove that the tribunal reached a patently unreasonable decision. The *Pay Equity Act* and the *Labour Relations Act* are examples of this arrangement.[75]

The Task Force endorses and adopts this approach for the Equality Rights Tribunal. To do otherwise would be expensive, lead to delay, and cause uncertainty in the enforcement of decisions. Moreover, judges lacking appropriate training and expertise would have the power to determine what human rights should be protected and how they should be enforced. These are inconsistent with the principles the Task Force has adopted to guide the new system.

The power of reconsideration must include the usual power to vary, revoke, or substitute any decision. This allows the Tribunal to reconsider decisions in cases where decisions are clearly inappropriate or inconsistent, or where there is a problem with the fairness of the hearing process. For example, a decision may become inappropriate when it has not been complied with and a new remedy becomes necessary, or when evidence becomes available that could change the outcome but was not reasonably available at the time of the hearing.

Given that the Tribunal's initial decision is final, the power to reconsider a decision would usually be used only in exceptional circumstances.

RECOMMENDATION (58):

- **The Tribunal should have the power to reconsider any decision and to vary, revoke, or substitute a new decision.**

- **Apart from the power to reconsider, the Tribunal's decision should be final and protected from review by the courts except where the decision is patently unreasonable.**

Enforcement of Decisions

Many people told the Task Force that decisions should be enforced in an effective, prompt, and accessible manner. In this vein, the Task Force believes that the Tribunal must have the power to enforce its own orders and to prevent an abuse of its powers.

Currently, abuse is prevented and orders are enforced when the Board of Inquiry order is filed in the civil courts and then enforced as if it were an order of those courts.[76] A violation of an order of the civil courts leads to fines and/or imprisonment. There is also provision in the civil courts for ordering costs against the party who violates the order.

While these powers sound good in theory, actual access to these enforcement remedies is awkward and costly and usually requires the assistance of a lawyer.

The new human rights system will provide a more accessible enforcement process. Tribunal Officers will have the authority to monitor and enforce the Tribunal's decisions. Rather than not complying because of an order is not clear, respondents will be able to seek clarification from these Officers on how to comply. Claimants, too, will be able to call on these officers to assist if compliance becomes an issue.

The monitoring remedies that the Tribunal will be able to order are referred to in Section XVI.

RECOMMENDATION (59):

- **The Tribunal should take a proactive approach to enforcement by ensuring that the Tribunal Officer assists both the claimant and the respondent in the enforcement of an order.**

- **The *Code* should provide that orders of the Tribunal, when filed with the Ontario Court of Justice (General Division), have the same force and effect as an order of that Court and therefore can result in fines and/or a jail term for non-compliance.**

Appropriate Fines

It is a provincial offence to impede an investigation under the *Code*, contravene an order of a Board of Inquiry, and infringe a person's right under the *Code*.[77] In order to prosecute anyone under this section, it is necessary to get the consent of the Attorney General. Fines under this section are limited to $25,000.

The Task Force was asked to consider increasing the fine to a figure more consistent with the serious nature of the offence. The *Pay Equity Act* has fines of up to $50,000.[78] Environmental protection legislation has fines that start at a minimum of $2,000 and increase to over $200,000.[79]

The Task Force believes that the current fine amounts do not reflect the seriousness of the offence and that they should be increased to a level similar to that required to protect the physical environment. The Commission recommended to the Task Force that any fines be paid into a special levy fund. The Task Force agrees with this approach.

RECOMMENDATION (60):

- **The *Code* should be amended to increase the fines for obstruction of the Tribunal process or failure to comply with a Tribunal order to a level that is consistent with environmental protection legislation, that is, a minimum fine of $2,000 and a maximum fine of $200,000.**
- **The money collected by the Treasurer of Ontario from the fines imposed under this section should be paid into an Enforcement Fund that could be called upon when extra funds are needed for the new human rights enforcement system.**

Order for Payment of Legal Costs Inappropriate

The Task Force considered whether the Tribunal should have the power to order a party to pay the costs incurred by other parties in a hearing on any grounds. The Task Force believes that this Tribunal, like the other tribunals in the field, should not have such power. Neither the Pay Equity Hearings Tribunal, nor the Ontario Labour Relations Board, nor the Workers' Compensation Appeals Tribunal have the power to do so.

The Task Force is concerned that including a power to order costs will act as major deterrent to the filing of legitimate claims because claimants may be afraid that they will be bankrupted by a potential costs order and therefore, will not pursue a claim.

Currently, the *Code* provides that the Commission may be ordered to pay the costs of a respondent if the complaint against the respondent is dismissed and the Board of Inquiry finds that

- the complaint was trivial, frivolous, vexatious, or made in bad faith; or,
- in the particular circumstances, undue hardship was caused to the person complained against.[80]

It appears this costs section was thought to be necessary in deterring the Commission from forcing a respondent to defend itself at a Board of Inquiry when there was no merit to the case. In the current system, the Commission has carriage of the complaint and the decision to appoint a Board of Inquiry.

In the proposed system, the Tribunal, not the Commission, would have the responsibility, at the request of a party or on its own request, to dismiss a complaint shown to lack any merit. It is hoped that the various procedures that the Task Force has suggested to deal with cases lacking merit will significantly reduce the likelihood that respondents will be required to incur significant costs in such cases.

The Task Force also considered whether to limit a possible costs order to those situations where a party was obstructing or unduly delaying the Tribunal process. Although it is important to ensure that all the parties at the Tribunal are respectful of the Tribunal's procedures, the Task Force believes that the Tribunal's considerable powers to control its own process (either through its own Tribunal Officer or through the courts) should be sufficient to deal with the issue of obstruction, delay, or violation of an order. There is also provision for prosecution in those circumstances.

While the Task Force understands the advantages that a power to order costs will have in controlling the caseload, it believes the disadvantages substantially outweigh any advantages.

RECOMMENDATION (61):

- **The Tribunal should not have the power to order any party to pay legal costs to another party.**

XX. TRAINING THOSE WHO WORK IN THE NEW SYSTEM

Need For Human Rights Training

The Task Force was repeatedly told of the need for human rights training. Little is presently done, and what is done tends to be haphazard and uncoordinated. Human Rights Officers told the Task Force of their frustration with their limited training.

Training will be an essential component of the human rights system recommended by the Task Force. Human rights adjudicators and mediators, as well as officers and other staff at the Equality Rights Tribunal, will need special human rights training.

The Tribunal's Resource and Training Section will provide specialized training for Tribunal members responsible for receiving, hearing, mediating, investigating, and monitoring human rights claims and decisions. It will also offer the training program to people responsible for dealing with human rights claims under the *Labour Relations Act* or other Acts such as the *Workers' Compensation Act*. A fee would be charged.

Coordination of Training for Administrative Tribunals

A reformed human rights system will not be alone in needing training programs. Other administrative agencies, such as ones dealing with pay equity and employment equity, have need of training programs. In fact, a number of organizations and studies[81] have called for a centralized council to take responsibility for coordinating, assisting, training and evaluating the many administrative tribunals in Ontario.

Recently, 19 tribunal chairs who are part of an informal "circle of Chairs" made a similar recommendation to the Management Board of Cabinet.

The Task Force believes there would be many advantages to setting up such a Council to provide consistent, coordinated training. It would be advantageous for the new Equality Rights Tribunal to share in training programs prepared for administrative tribunals.

RECOMMENDATION (62):

- **The Resource and Training Section of the Equality Rights Tribunal should provide specialized human rights training for adjudicators and staff of the Tribunal.**

- **A coordinated approach, particularly with other equality agencies, should be used to provide training for persons appointed to, or hired by, the Equality Rights Tribunal.**

Training those people who do not work within the new Tribunal is discussed in Sections IX, XII, XV, XVI, XXI, and XXIII. In particular, reference should be made to Section IX in regard to equality rights lay advocates; to Section XV in regard to employees, employers, union members, union representatives, management, human resource personnel, arbitrators and union and management sides-people; and to Section XXI in regard to government staff.

XXI. PROACTIVE ROLE OF GOVERNMENT AND MAJOR PUBLIC BODIES

Strong, Positive Leadership on Equality Rights

Many of the submissions the Task Force received from both claimant and respondent groups stressed the need for the Government itself to be a human rights leader in its policies and practices. The government should, in partnership with the affected groups, take strong, positive measures to achieve equality rights in every area under its control.

The Task Force agrees that the Government of Ontario and major public bodies should set a clear example of leadership to advance equality rights. Both as the representative of the people of Ontario, and as the largest employer and provider of services to the public, the Government has a special obligation to implement a comprehensive, positive plan of action to overcome discrimination. It is currently the most frequent respondent under the *Code*. The government must be the Government of *all* the people of Ontario, including those who lack social, economic, and political power.

The government has, in fact, recognized its special leadership obligation and has undertaken a number of important equality initiatives. The Task Force applauds these positive initiatives and encourages the Government to pursue them vigorously.

At the same time, there are still very serious and systemic inequalities arising out of the Government's employment, services, policy, law-making, and funding functions.

To assist the Government in correcting these discriminatory practices and policies, The Task Force recommends that the Government adopt a comprehensive, coordinated plan to advance equality rights.

The government should require positive action to be taken in all areas under its control in order to overcome present patterns of entrenched discrimination and to ensure that members of discriminated against groups benefit equally and fairly from government job opportunities, services, and policies at all levels.

As part of this plan for action, the Task Force believes there should be a structure in place to ensure that the Cabinet Office is able to effectively direct and coordinate the Government's overall strategy throughout the Government's decision-making, whether it be in the development of policies, practices and laws, in the provision of services, or as an employer.

One way of facilitating this direction is by setting up an Equality Committee of Cabinet, which could include the Premier, the responsible Minister, and other key ministers such as Minister of Health, Minister of Community and Social Services, the Chair of Management Board, and the Treasurer. This option would be particularly useful if there was also a Minister of Equality to whom all the equality agencies would report or report through.

Another way is for the Premier to give all the existing committees of Cabinet, including the Justice Policy Committee or the Social Policy Committee, a specific and structured mandate to consider and coordinate all equality issues in their development and discussions of policy in their subject areas.

In looking at the options in this area, it is important to respect the struggle of the black and visible minority community to gain improvements in their ability to influence the Government on anti-racism policies. This effort led to the recent recommendation by Stephen Lewis, Advisor on Race Relations to Premier Bob Rae, to re-establish the previous Cabinet Committee on Race Relations. Such a specific focus on race relations is badly needed at the highest levels of government. At the same time, there are many other groups covered by the *Code*, the disabled community particularly, who have also asked for and need such high level access.

The Task Force believes that the Government should consult with the community to determine what would be the most appropriate mechanism to ensure ongoing cabinet accountability.

Whatever mechanism is used, the senior Minister designated with responsibility under the *Code* should be accountable for the work of the Cabinet Office in this area. On behalf of the Cabinet office, the Minister would receive and monitor equality reports from every ministry and from specialized equality agencies, such as the Anti-Racism Secretariat, the Office for Disability Issues, the Women's Directorate, and the Office for Seniors' Issues.

The responsible Minister would submit an annual Equality Rights Report to the Legislature. This report should be distributed to the community and to an all-party Committee of the Legislature on Equality Rights.

The Legislative Committee should invite members of equality seeking including groups to appear before it to give their assessment of the Equality Report and the Government's performance in equality rights, as well as their recommendations for improvements.

Each year, the Legislature should have a day of debate on equality rights, which could take place at the time the Equality Report is tabled in the legislature.

The Equality Report should be submitted to the United Nations as part of Ontario's reporting obligations under international human rights covenants.

It should be noted that an all-party Standing Committee on Human Rights and the Status of Disabled Persons exists at the federal level. This Committee holds hearings into important human rights topics, invites members of equality seeking groups and other experts to appear before it, and tables reports with its recommendations in the House of Commons. At times, the Committee travels across the country holding hearings. The Committee has played an important role in focusing attention on particular human rights issues and monitoring government performance. It has helped give human rights a higher profile in general and has had a positive influence in bringing about law reform.

The Task Force believes an all-party Legislative Committee on Equality Rights could act as a watchdog and be a positive force to advance equality rights in Ontario. It should review and hold hearings on the performance of Human Rights Ontario, the Equality Services Board, and the Equality Rights Tribunal. It could also review the performance of Pay Equity Commission and the Employment Equity Commission.

RECOMMENDATION (63):

- **The Government of Ontario and major public bodies should play a leadership role in advancing equality rights in the province.**
- **The Government of Ontario and major public bodies should require positive action to be taken in all areas under its control in order to overcome present patterns of systemic discrimination and ensure that members of discriminated against groups benefit equally and fairly from government job opportunities and services at all levels.**
- **The Premier mandate the Cabinet Office in consultation with the community to establish a mechanism to develop a coordinated strategy to advance equality rights, to ensure the integration of that strategy throughout the Government's decision-making (including the development of policies, practices and laws, the provision of services and/or employment practices), and to monitor the Government's performance in advancing equality rights.**
- **On behalf of the Cabinet Office, the Minister would receive and monitor equality reports from every ministry and from the specialized equality agencies, such as the Anti-Racism Secretariat, the Office for Disability Issues, the Women's Directorate and the Office of Seniors Issues.**
- **The Government, through the Cabinet Office and the responsible Minister, should submit an annual Equality Rights Report to the Legislature. The Report together with the Commission's Annual Report should be widely distributed and be submitted to the United Nations as part of Ontario's reporting requirements under international human rights covenants.**
- **An all-party Legislative Committee on Equality Rights should be established to provide a forum and to monitor and advance equality rights in Ontario.**

- **The Legislative Committee should invite members of the community, including equality seeking groups, to appear before it to give their assessment of the Equality Report and the Government's performance in equality rights, as well as their recommendations for improvements.**

- **Each year the Legislature should have a day of debate on equality rights, which could take place at the time the Equality Report was tabled in the legislature.**

Coordination of Equality Enforcement

A number of different laws, policies, and programs dealing with equality rights have been put in place by the provincial government at different times over recent years, and there is significant overlap in their functions. For example, the *Human Rights Code* is not the only law in Ontario dealing with equality rights in employment. The *Pay Equity Act* and the anticipated *Employment Equity Act* also protect certain groups from discrimination in the workplace.

In addition, a number of provincial government agencies have been created with the specific mandate to advance equality rights for a particular group, for example, the Ontario Women's Directorate, the Office of Disability Issues, the Anti-Racism Secretariat, and the Office for Seniors' Issues.

Some of these separate agencies were originally set up not only to provide a distinct focus but also partly because of lack of confidence in the Human Rights Commission's ability to provide the necessary focus, expertise, and attention. The Pay Equity Commission and Pay Equity Tribunal were set up so that the new pay equity process would not be bogged down in the Commission backlog. The Anti-Racism Secretariat seems to have taken the place of the original Race Relations division of the Human Rights Commission, which still exists in the *Code*. The Employment Equity Commission is being set up as a separate agency outside the Ontario Human Rights Commission.

The Task Force believes the work of these different agencies should be coordinated so as to achieve the maximum benefit and help underline a unified, principled approach to equality rights.

For example, the hearing process for cases under the three equality rights laws (*Human Rights Code*; *Employment Equity Act*; *Pay Equity Act*) should be coordinated under one Equality Rights Tribunal. This recommendation is treated in greater depth in Section XVI.

In the areas of education, research, community development, and proactive initiatives, the work of the different equality agencies should also be coordinated.

The Chief Commissioners for Pay Equity, Employment Equity and Human Rights should meet regularly and establish a mechanism for their respective staff to coordinate any overlapping law enforcement and education functions.

The Task Force believes that three Commissioners should also meet regularly with the head of the Anti-Racism Secretariat, the Women's Directorate, the Office of Disability Issues, and the Office for Seniors' Issues to coordinate responsibilities with these government education and policy development bodies.

For example, if the Anti-Racism Secretariat is carrying out extensive consultations around the province on ways to combat racism, it might include human rights as part of the discussions. This could provide valuable feedback to the new Commission and prevent wasteful duplication of effort, as well as unnecessary demands on the communities being consulted.

The Chief Commissioner should be responsible for coordinating projects with other equality agencies so activities are planned strategically.

RECOMMENDATION (64):

- **The work of the various equality agencies should be coordinated, both in enforcing rights and in education, research, community development, and proactive initiatives. A regular mechanism should be put in place for ongoing coordination and cooperation.**

- **The Chief Commissioners for Pay Equity, Employment Equity, and Human Rights should meet regularly and establish a mechanism for their respective staff to coordinate any overlapping law enforcement and education functions.**

- **The Cabinet Office should establish a coordination mechanism that would allow for regular meetings of all provincial government agencies that have the specific mandate to advance equality rights for particular groups protected by the *Code*, such as the Ontario Women's Directorate, the Office of Disability Issues, the Anti-Racism Secretariat, and the Office for Seniors' Issues.**

Proactive Responsibilities of Each Ministry and Major Public Body

... equality audits ...

The Ontario government has already recognized the importance of requiring each ministry and agency to adopt and implement clearly stated employment system reviews or audits to identify and rectify systemic employment barriers.

The Task Force believes this approach should be strengthened and extended to require ministries and agencies to adopt and implement clearly stated system reviews or audits for the other areas of obligation they have under the *Code*. This would include a service equity plan for services provided or overseen by the Ministry or major public body. (See Section XXII, Proactive Measures for Employers, Accommodation and Service Providers.)

Such a service equity plan should establish specific measures to review whether services are provided equitably in accordance with the *Code*. It should include both implementation strategies and monitoring so that the inequities in service provision experienced by those protected by the *Code* are substantially reduced. Members of equality seeking groups in the community should be involved in developing, monitoring, and evaluating the plan.

... human rights training ...

Deputy Ministers should receive ongoing training in the principles of effectively implementing equality under the *Code* and in the particular equality issues raised by their ministry's mandate.

The Deputy and Agency Head should be accountable for ensuring that the employees in their organizations are informed on human rights issues.

Every ministry and agency should provide equality rights training to their staff to ensure that equality perspective is integrated within all levels of decision-making in the ministry. For the Government, this would reduce pressure on the various Offices or Directorates to catch discriminatory policies or practices later down the line before they are submitted to cabinet.

If an equality perspective were integrated into each ministry and agency, those who put forward an equality perspective would be seen as providing a helpful opportunity for positive change.

Each ministry and agency should post a notice about the *Code*'s requirements, as well as an outline of their service equity plans in a prominent location. The information should be available in a manner that can be understood by everyone. See Section XXII for more details on this requirement.

The Deputy or Agency Head and the responsible Minister should be required to meet with the Commission every six months to assess the effectiveness of the organization's initiatives and its plan for the next six months.

RECOMMENDATION (65):

- **Each government ministry and major public body should be required to adopt and implement a clearly stated equity plan for services provided or overseen by the ministry or agency.**

- **The Deputy and Agency Head should be accountable for ensuring that the employees in their organizations are informed on human rights issues.**

- **Deputy Ministers should receive training in the principles of effectively implementing equality and should be accountable for the resolution of the particular equality issues raised by their ministry's mandate in all the areas covered by the *Code*.**

- **Every ministry and major public body should provide equality rights training to their staff to ensure that an equality perspective is integrated within all levels of decision-making in the ministry.**

- **Operational responsibility for implementing these service equity audits and plans should be with the Deputy Minister or head of the major public body. Success in effectively carrying out these reviews and implementing strategies for change would be a specific, significant factor in performance appraisal of the Deputy Minister or top official.**

- **The Deputy or Agency Head and the responsible Minister should be required to meet with the Commission every six months to assess the effectiveness of the organization's initiatives and their plan for the next six months.**

- **Each ministry and agency should post a notice about the *Code*'s requirements, as well as an outline of their service equity plans, in a prominent location. The information should be available in a manner that can be understood by all employees. (See Section XXII for further details.)**

Immediate Review of Existing Rights Claims

The government and other major public bodies should take immediate steps to review all rights claims filed against them. In particular, they should

- identify what discrimination cases they are currently arguing before the Commission, Board of Inquiry, the Grievance Settlement Board, or any adjudicative bodies;

- analyze the position they are taking from the viewpoint of attempting to take positive steps to promote equality and determine whether a case can be appropriately resolved without requiring the claimant to pursue a formal claim; and

- ensure that the people who are making judgments about whether to defend such claims, or the lawyers representing them, understand and are committed to the advancement of equality through a positive, constructive approach.

Such action would promote a more positive climate and reduce the backlog of cases under the *Code*. It would help ensure that available resources are used as productively as possible.

RECOMMENDATION (66):

- **The Government and all major public bodies should conduct an immediate review of all rights claims made against them, seek a positive resolution wherever possible, and ensure that persons responsible for deciding to defend such claims and their lawyers are properly trained and informed on the *Code*'s proactive obligations and committed to a positive, constructive approach.**

... reporting misuse of public funds on defence of rights claims ...

The Task Force believes that government bodies have a special responsibility to approach human rights in a positive and constructive spirit. As stated earlier, they should not respond to human rights claims in a legalistic and adversarial manner. Instead, they should look at claims in the context of their overall human rights record and assess whether they have, in fact, made sufficient positive efforts to respect the equality rights of the claimant and the group the claimant belongs to.

Instead of putting effort and money into fighting human rights claims, publicly funded bodies should view them as constructive opportunities to examine whether there are weaknesses in their human rights performance and, if so, find ways to improve them.

Too often in the past, at both the provincial and federal level, government agencies have poured large sums of money on lawyers' fees to fight human rights claims in a narrow, legalistic, spirit that could have been avoided or settled if proper measures were put in place. Because such bodies have access to public funds, they can easily outspend the claimant, who often is dependent on donations and fund-raising to pursue his or her human rights claim.

The federal government spent hundreds of thousands of dollars of taxpayers' money in the courts trying to defeat Bonnie Robichaud's claim of sexual harassment, rather than using its resources to try to deal with the real problem of sexual harassment in the workplace. Women saw their tax money being used to pay federal government lawyers to argue, right up to the Supreme Court of Canada, that under human rights legislation employers have no responsibility for sexual harassment in the workplace.

The Ontario government also approaches the defence of human rights claims with a defensive approach. In a recent case, the Government instructed legal counsel to argue against the right of several Ontario government employees to be able to use special leave time provisions in the collective agreement for Jewish holy days. The arbitration board decided that the Government had violated the equality rights of these employees.[82]

The Task Force considers it a misuse of public funds for the Government and major public bodies to use large amounts of public funds to defend claims in an unduly legalistic and adversarial manner.

It is particularly upsetting for this to happen when funds for protecting human rights are not adequate to deal properly with the *Code*'s mandate. Human rights claimants do not usually have the resources to pay for lawyers. Limited resources are available to them. These should not be used up in unnecessary and unconstructive ways.

To discourage public bodies from spending money in this way, the Task Force recommends that the Government or major public bodies who are defending equality claims under the *Code* must report to Human Rights Ontario every six months the amount of money that they are spending on the defence of these claims, any settlements that have been reached, and copies of any decisions on those claims. The Commission could then make this information public and include it in its annual report to the Legislative Committee.

RECOMMENDATION (67):

- **Public bodies should take a constructive approach to human rights claims made against them by focusing on the real, underlying issue of whether they have made sufficient positive efforts to achieve equality rights and whether improvement could be made.**
- **The Government should review and monitor its instructions to inside and outside legal counsel on matters relating to human rights claims made against it to ensure these instructions are consistent with a positive proactive approach to compliance.**
- **A public body against whom a human rights claim has been filed should be required to make public how much money it is spending on the case. The body must report to Human Rights Ontario every six months the amount of money that it is spending on the defence of rights claims, any settlements that have been reached, and copies of any decisions on those claims. The Commission could then make this information public and include it in its annual report to the Legislative Committee.**

XXII. PROACTIVE ROLE FOR EMPLOYERS, ACCOMMODATION AND SERVICE PROVIDERS

Proactive Human Rights Policy

Many individuals and groups appearing before the Task Force called for proactive approaches to overcome discrimination as a better method of enforcing the *Code*.

Over and over again, studies of discrimination have concluded that the only way to make any significant gains toward equality is by requiring positive measures to be undertaken. Dealing with individual cases, one at a time, and obtaining individual remedies, as is the current practice, is costly, time-consuming, and unproductive. It feeds antagonism, causes high legal costs, and provides minimal results. It does not render good service to either those who experience discrimination or those who are running businesses.

One major business organization recommended to the Task Force that systemic discrimination be tackled predominantly by educational rather than enforcement measures because many employers are not aware of what systemic discrimination is.

The Task Force does not agree with this suggestion. An educational, voluntary approach to overcoming systemic discrimination has been followed at the federal and provincial level for many years. In the absence of an effective enforcement process, the results have been very poor, particularly considering the amount of money that has gone into such educational measures.

Furthermore, the Supreme Court of Canada has consistently required employers to take positive, systemic action to overcome systemic discrimination, pointing out that this is the only way to give meaningful effect to human rights laws.

The Task Force believes the time of waiting and hoping for human rights to be implemented is over. In order to update the *Code*, an enforcement regulation should be passed making clear that the "right to equal treatment" in the *Code* means that employers, unions, and service and accommodation providers are required to take positive measures to overcome discrimination and accommodate differences. The extent to which reasonable positive measures have been taken to overcome discrimination will be considered as part of the evidence in any claim.

RECOMMENDATION (68):

- **An enforcement regulation should be passed making clear that the "right to equal treatment" in the *Code* means that employers, unions, and service and accommodation providers are required to take positive measures to overcome**

discrimination. The extent to which reasonable positive measures have been taken to overcome discrimination will be considered as part of the evidence in any claim.

Employer Proactive Measures

... measures should cover all groups experiencing discrimination ...

By means of pay equity laws, the Government has put in place specific practical requirements and a particular enforcement mechanism to achieve equality rights for women workers who face pay discrimination.

Proactive measures will also be required as part of the recently introduced *Employment Equity Act*, which covers people of colour, women, people with disabilities, Aboriginal peoples, and Francophones in the public sector.[83] The Task Force applauds these measures.

It is important to recognize that the *Code* likewise requires positive measures to advance equality rights of all the groups it covers. For example, affirmative action measures have been ordered by an Equality Rights Tribunal as a proactive remedy once a claim of systemic discrimination has been upheld.[84]

The Task Force believes that employers should take strong, effective measures to remove systemic discrimination against all the groups covered by the *Code*, in all the areas covered by the *Code*.

Once employers develop employment equity plans for the groups covered by employment equity, they will also want to consider appropriate proactive measures to achieve equality for all groups protected under the *Code*. It is to the employers' advantage to comply with the *Code* in this way, since employees who are not covered by the *Employment Equity Act* will then be less likely to file a claim under the *Code* that proactive measures are not being taken for their group.

In addition, people belonging to the groups covered by employment equity are also members of other groups covered by the *Code*. For example, a woman covered by an employment equity plan may also be a single mother; a person of colour may also be a gay man. If employers wish their employment equity plan to work well, they should treat a job applicant or employee fairly, as a complete person.

As well as being the right thing to do, proactive human rights policies and practices make excellent business sense. A business is more likely to be efficient and well run if unthinking, traditional barriers are removed. If the workplace is inclusive and benefits from the best skills and abilities of the whole community, it will achieve better results.

For a variety of reasons, then, employers should take measures to overcome discrimination against groups who may not be included under employment equity legislation.

As a basic informational initiative, employers should post in a prominent spot in the workplace a clear, easy-to-understand notice provided by Human Rights Ontario informing employees and employers of their rights and obligations under the *Code*. This information should also be available in other forms so that all employees in the workplace can understand, not just those who are able to read English.

RECOMMENDATION (69):

- **Employers should take proactive measures to overcome discrimination against groups who may not be included under employment equity legislation. This includes different ethnic groups and different creeds, and persons discriminated against because of their sexual orientation, their family or marital status, or their a record of offences.**

- **As a basic informational initiative, employers should post in a prominent spot in the workplace a clear, easy-to-understand notice provided by Human Rights Ontario with information along the following lines.**

    - **Under the Ontario *Code*, every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, or disability.**

    - **The employer is bound by the *Code* and has a policy to take positive measures to overcome discrimination.**

    - **It is a serious matter not to obey the *Code*.**

    - **A person who believes discrimination is being practised can get assistance by contacting the appropriate person in the workplace (including a union representative, if appropriate), any person in the workplace responsible for human rights claims (giving information on how to contact that person), or the nearest Equality Rights Centre (giving information on how to contact that office).**

    This information should also be available in other forms so that all employees in the workplace can understand, not just those who are able to read English.

... employers should be informed on human rights ...

The *Occupational Health and Safety Act* requires any employer's supervisor to be "a competent" person, that is, knowledgeable about the *Act's* requirements and about health and safety dangers. A trained employee health and safety representative is required in most workplaces.[85]

The Task Force believes the principle behind this concept is useful in the human rights field as well. Just as it was necessary to take proactive measures to require employers to become informed on workplace hazards, so employers need to be directed to become informed on human rights so that they can protect their employees' rights.

Through its Commissioner for Compliance Services and Commissioner for Education, Human Rights Ontario would be responsible for providing educational kits on human rights requirements in the workplace. This training would be provided at a fee that could be waived where appropriate. See Sections XV and XXII for other ways human rights training and information might be made available.

RECOMMENDATION (70):

- **The most senior official of an employer should be required to ensure that management at all levels is informed of its human rights responsibilities.**
- **Human Rights Ontario, through its Commissioner for Compliance Services and Commissioner for Education, would be responsible for providing educational kits on human rights requirements in the workplace. These kits would be provided at a fee that could be waived where appropriate.**

... workplace human rights committees ...

Again following the lead of the occupational health and safety laws, the Task Force considered whether workplaces should be required to have human rights committees where the employer and employees or a union could meet regularly to properly identify and resolve human rights concerns. In principle, the Task Force believes that such committees would be a very useful means of dealing with discrimination proactively, without involving parties outside the workplace. Committees that had the backing of, and reported regularly to, the highest official in the company could be quite effective. Their reports, as well as a response by the highest official, could be made available to all employees and any union that existed. With such committees taking responsibility for considering issues of discrimination, it is hoped fewer individuals would be forced to file claims outside the workplace.

In light of the new *Employment Equity Act*, however, and its separate negotiation and consultation requirements, the Task Force does not believe it is appropriate at this time to require employers to set up another process to deal with the human rights concerns not covered by their employment equity obligations. However, the Task Force does believe that employers need to ensure they have some mechanism to deal with all the human rights concerns in the workplace.

RECOMMENDATION (71):

- **Workplace Human Rights Committees are an effective tool, but should not be made mandatory at this time. Instead, employers should coordinate their proactive, mandatory obligations under the *Employment Equity Act* with their responsibilities to the other groups covered by the *Code* and not covered by employment equity legislation.**

... internal human rights systems ...

Some employers have set up internal systems to deal with human rights claims. These internal systems vary a great deal. Some involve little more than employees telling their supervisor of a human rights claim and the supervisor being expected to deal with it. Other internal systems are more substantial, with an investigation and a decision-making process.

The Task Force believes such systems can be a way of dealing with claims speedily and, even better, proactively. To work well, such systems should be developed in partnership with employees. The system should be negotiated with the union where there is one. In a non-unionized workplace, an effective mechanism to allow employee representatives to participate should be found. Members of groups who experience discrimination should be the majority on the Committee and should play a prominent role.

A number of companies have set up such systems and are satisfied that they bring benefits to the employer as well as the employee by resolving problems at an early stage and improving in-company communication. Some, like the one at General Motors are administered jointly with the union and the Canadian Autoworker. Yet the Task Force was also told by those who experience discrimination that these systems often do not lead to any real change, since the employers mostly design and control them.

Some employers recommended that employees be required to exhaust the internal system before they can file a claim under the *Code* or that the Equality Rights Tribunal should not hear a claim that has already been dealt with by an internal claim process, unless the individual can show that the internal claim process was inadequate.

In the view of the Task Force, employees will make use of an internal claim system if it is seen to be effective and fair. No person should be forced to use an internal employer-controlled system that has been set up by an employer. The power imbalance within a non-unionized workplace is just too great, and there are not sufficient statutory guarantees for the fairness of the process. It must be a matter of choice.

RECOMMENDATION (72):

- **Effective internal human rights systems developed in partnership with employees and involving active participation of employees may be a useful way to resolve human rights claims in the workplace.**

- **Employees should not be required to exhaust an internal workplace human rights system before they can file a claim under the *Code*. An employee's use of such an internal process should not bar their filing a claim with the Tribunal.**

Proactive Measures for Accommodation Providers

While the *Employment Equity Act* requires employers to take positive measures to overcome discrimination and to report on their results[86], no such specific requirements apply to service and accommodation providers, apart from their general proactive *Code* obligations.

The Task Force believes that positive measures are equally necessary and important in these crucial areas.

In the area of rental accommodation, for example, the Task Force was told that serious problems of discrimination are encountered by people of colour, single mothers on welfare, people with disabilities, Aboriginal people, and other disadvantaged groups.

In a recent survey of affordable apartments in Metropolitan Toronto, owners or managers of 27 860 units (56 per cent of the affordable units covered in the survey) stated that they do not rent to people on welfare. 70 per cent of owners reported that they use income qualifications which disqualify welfare recipients.[87] A study conducted by the Centre for Equality Rights in Accommodation found that these and other forms of systemic discrimination have a devastating effect on members of visible minorities, particularly women with children who need housing. Visible minorities also face widespread racial discrimination and harassment in housing. 34 per cent of visible minorities contacting the Centre for Equality Rights in Accommodation last year to report discrimination in housing called to report an incident of overt racial discrimination or harassment.

The Task Force was told denying people access to proper accommodation can endanger their safety and their physical and mental health by making them homeless, forcing them to live in unsafe and unsanitary lodging or causing families to split up.

Dealing with such complaints as single cases one at a time places a heavy burden on the shoulders of people who already have too many unfair hurdles to overcome. When a single mother needs a home for herself and her children, or an Aboriginal woman escaping a situation of violence tries to rent an apartment, the last thing she has time or energy for is to file a human rights claim.

Instead of waiting for claims to be filed, people involved in the housing and rental industry should take positive measures to overcome broad patterns of discrimination in access to accommodation. For example, the industry should consider adopting standards to ensure that all new construction or renovation of housing makes the accommodation accessible to people with disabilities.

In conjunction with groups such as CERA, the housing and rental industry should analyze rules covering what information it is appropriate to ask potential tenants. Questions and policies that have a discriminatory impact should be removed.

Ensuring that landlords are informed about their human rights responsibilities is important as well. Human Rights Ontario could provide information kits to landlords to help them become informed. A fee would be charged that could be waived where appropriate.

As a basic informational initiative, a notice about the *Code* provided by Human Rights Ontario, similar to that recommended for employers, should be posted in a prominent place and available in a form understandable to tenants. This notice could be posted in the elevator along with the elevator permit sign. For a landlord with less than two units and no common area, the notice should be given directly to the tenants.

RECOMMENDATION (73):

- **The housing and rental industry should take broad, practical, proactive measures to overcome patterns of discrimination in access to accommodation.**
- **Landlords should be required to be informed about their human rights responsibilities relating to providing accommodation. There would be consultation with all concerned on how best to implement this. Human Rights Ontario would assist in providing information kits for which a fee would be charged. This fee would be waived when appropriate.**
- **If the housing and rental industry does not take effective measures, Human Rights Ontario, in partnership with the affected groups, should consider adopting strategic**

measure, such as regulations, in order to overcome discrimination in access to accommodation.

- **A notice about the *Code* provided by Human Rights Ontario, similar to that recommended for employers, should be posted in a prominent place and available in a form understandable to tenants. This notice could be posted in the elevator along with the elevator permit sign. For a landlord with two units and no common area, the notice should be directly given to the tenant.**

Proactive Measures for Service Providers

In the area of services available to the public, a positive approach to overcoming discrimination should likewise be undertaken. Like employers under employment equity legislation, service providers should be required to develop and implement positive policies and practices to overcome discrimination.

Like employers and landlords, service providers should also be required to be informed of their human rights responsibilities. Since there is no precedent for having "informed persons" in services, as there is in employment, there should be consultation with the service community on how to best implement this recommendation.

Many important services - such as health services, education, transport, recreation, libraries, and social services - are provided by government or publicly funded agencies. As part of their proactive approach toward discrimination, major publicly funded service providers should develop, with the participation of the affected groups, a service equity plan with specific objectives. This plan should include an implementation and monitoring mechanism. Service providers could monitor and report each year on the results achieved by their service equity plan and whether their services fairly and effectively meet the needs of groups protected by the *Code*.

The service equity plan might also include a mechanism for members of the targeted groups to respond to the report and make recommendations for improvement. A copy of the service equity plan and report, as well as the response of the affected groups, should be sent to Human Rights Ontario each year.

The service equity plan should use a variety of approaches, depending on the nature of the service. In the area of education, for example, school boards could have a positive duty to ensure that students from racial and ethnic groups other than the dominant one benefit equally from the opportunities provided and graduate from all courses, at all levels, in a proportion consistent with their number. School boards could be required to ensure that female students have equal access to non-traditional courses and to sports opportunities and budgets, consistent

XXIII. EDUCATION AS A STRATEGIC PROACTIVE MEASURE

Unique Education Role of Human Rights Ontario

One strong common thread throughout the consultation was a call to use strategic education initiatives to enforce the *Code*. Research conducted for the Task Force by the Urban Alliance on Race Relations finds that "[f]ew people know what rights are protected under the *Code*."[88] "[T]he best anti-discrimination laws with the strongest of provisions are ineffective if no one knows about them, understands them or is able to use them."[89] Many respondents said that education would enable them to improve their performance in ensuring equality.

A great deal was heard on exactly where this education should take place, who should receive it and who should provide it.

The Task Force believes that the strategic use of education initiatives is an important part of the new human rights enforcement system. Human Rights Ontario has a unique and important role to initiate and oversee education activities which will advance its overall strategic plan for the enforcement of human rights. Human Rights Ontario should focus on educational initiatives which are most likely to concretely contribute to the reduction of systemic discrimination in the strategic areas it has identified.

Education can help to establish the proper environment of understanding for dealing with and redressing systemic discrimination and therefore avoiding the filing of claims.

RECOMMENDATION (75):

- **Strategic proactive education is a key human rights enforcement strategy to ensure, advance and maintain a culture of equality.**
- **Human Rights Ontario has a unique and important role to play in the area of education to oversee and initiate education activities which will advance its overall strategic plan for the enforcement of Ontarians' human rights.**
- **To be effective, education must be innovative, reach all Ontarians and enter into strategic partnerships in doing so.**
- **Human Rights Ontario should focus on educational initiatives which are most likely to concretely contribute to the reduction of systemic discrimination in the strategic areas it has identified.**

Education initiatives, aimed at the general public as well as specific communities, will be the responsibility of the Commissioner for Education.

... the responsibilities of the Education unit will be to ...

- develop and implement creative and innovative educational strategies, in partnership with the Commission Advisory Council, so as to increase understanding of human rights by the general public;
- inform disadvantaged communities of their rights and how to access them, using creative, non-traditional approaches;
- widely distribute regular, up to date information to community groups and the general public on human rights developments and decisions;
- assist the Commissioner of Compliance Services in identifying needs and educational resources to assist the community of individuals and organizations responsible for ensuring equality;
- work with the Commissioner of Advocacy Services to identify needs and develop training for community advocates;
- use the following principles in developing educational initiatives:
    - is the educational campaign accessible?
    - does it adopt a consumer-centred, empowering approach to human rights education?
    - does it use the existing human rights expertise within the community?
    - does it meet specific regional needs?

Other agencies, in additions to the Human Rights Commission, also have a mandate to educate and promote equality rights. The Ontario Women's Directorate, the Anti-Racism Secretariat, the Office for Disability Issues, for example, fund community outreach and development, distribute informational material, do research, and carry out a variety of proactive, educational initiatives to advance equality rights for the particular group they target.

Unlike the other Government equality agencies with educational mandates such as the Ontario Women's Directorate, the Commission is responsible for ensuring that the rights of Ontarians which are protected by the *Code* are achieved in employment, accommodation and services.

- Government agencies are part of government, whereas the Human Rights Commission must be totally independent of government and free from any possible government interference,

- Their mandate is for one group only, whereas the mandate of the Commission covers fifteen grounds of discrimination, and

- The mandate of these agencies covers such things as education, research and community development, but does not include the responsibility to enforce the provisions of a law.

In order to avoid duplication and to obtain the maximum benefit, it would seem desirable to coordinate the different educational work of government agencies and the educational work of the Human Rights Commission.

Much criticism has been voiced of the Human Rights Commission's failure to show a strong presence and leadership in educating people about human rights. A number of people said, for example, that the Commission should undertake a massive educational campaign using television ads to inform people of their rights. One factor in the failure of the Commission to carry out a major educational campaign of this kind, however, is its budget. It simply never had the staff or resources to play a major educational role around the province for all the groups and issues covered by the *Code*.

The public, equality seeking groups and respondent groups have high expectations that the Human Rights Commission should to do far more educational and proactive work for a wider range of groups, in addition to carrying out enforcement responsibilities under the *Code*.

The budget of the Human Rights Commission for enforcing the Human Rights *Code*, as well as carrying out educational and proactive initiatives to advance human rights for all the groups covered by the *Code* is significantly less than, for example, the budget for the Ontario Women's Directorate. The budget of the Commission for 1991/92 was about two-thirds of the Ontario Women's Directorate.

While the budgets of the Ontario Women's Directorate, the Anti-Racism Secretariat, the Office of Disability Issues, are needed and appropriate, the Commission must be properly funded to carry out its distinct role in human rights education.

The Task Force believes strongly in the importance of educational, preventative initiatives. It also takes note, however, that the rights in the *Code* are of near constitutional importance and the *Code* is the only vehicle for accessing and enforcing those rights.

Priority must therefore, in the Task Force's view, be given to doing education which will result in providing access to those rights and effective redress.

RECOMMENDATION (76):

- **Under the Human Rights Ontario budget, priority must be given to providing education aimed at making human rights enforcement accessible and effective.**
- **The education work of the various equality agencies inside government, such as the Anti-Racism Secretariat, the Ontario Women's Directorate and the Office for Disability Issues, should be coordinated with the work of the Human Rights Commission through a clearly identified, regular process of liaison.**

Human Rights Education in the Schools

Many people appearing before the Task Force emphasized the importance of providing positive human rights education through the regular school system.

From the earliest years, human rights should be part of the school curriculum. This would bring many advantages. Children who belong to groups who experience discrimination would be affirmed in their sense of self esteem and confidence. Children would learn the importance of respecting and including all members of society.

The history and present reality of discrimination in Canada and the ongoing struggle for human rights should be taught to all students. Students should learn what human rights protections exist and how to access those protections. Students should be encouraged and assisted in spreading human rights information in their own communities.

Human rights curriculum material for schools has already been developed and is being used in different parts of the country. The Ontario Department of Education should review what teaching material already exists, improve and supplement it as needed and require it to be taught throughout the Ontario school system.

The Task Force welcomes and endorses the strong recommendations to implement anti-racism and multicultural policies and practices throughout the education system, recently made by Stephen Lewis in his report to the premier as Advisor on Race Relations. The Task Force also welcomes initiatives underway and being proposed by the Ministry of Education to achieve that goal.

For example, Bill 21, currently before the legislature, would give the Minister of Education the power to require every school board in the province to develop and implement an employment equity policy for groups designated by the Minister, as well as to implement an ethno-cultural equity and anti-racism policy.

The Task Force urges all parties in the legislature to give full and prompt support to this Bill. It urges the Minister to take vigorous and effective action to implement the Bill once passed.

RECOMMENDATION (77):

- **Effective human rights material should be developed and included in the regular school curriculum at every level from the earliest years.**
- **The Ontario Ministry of Education should review the human rights curriculum material that already exists, improve and supplement it as needed and require it to be taught throughout the Ontario school system.**

Access to Teacher Training

Faculties of Education throughout the province should take positive measures to open up training opportunities to groups who have traditionally been excluded, such as persons of colour, persons with disabilities, poor people.

Some Faculties of Education have taken action to broaden accessibility to the training they provide. Others have not.

In his report to the Premier, Stephen Lewis noted that some Directors of Education with whom he met were "considerably agitated about the exclusionary policies of Faculties of Education."[90]

The Task Force notes the Teacher Education Council, Ontario's recommendation, recorded in the Lewis report, which is supported by various Boards of Education and would require

> that 9 per cent of admission places in Faculties of Education (to reflect the work-force) be reserved, on a right-of-first-refusal basis, for qualified visible minority candidates, and that they be equally eligible for all other places.[91]

Such provisions could be extended to other disadvantaged groups such as persons with disabilities.

Under the contract compliance provisions of the Human Rights *Code* (which the Task Force has recommended in Section XII of this report be expanded to include service equity requirements), universities and colleges might have to report on their progress in equity when submitting their budgets to the Government.

Part of the decision-making in granting funds to universities and colleges should be how well they were serving all the people of Ontario. The employment and service equity record of the university or college should be a key element in making that decision.

RECOMMENDATION (78):

- **The Government should require Faculties of Education to take positive measures to open up training opportunities to disadvantaged groups.**
- **Under the contract compliance provisions of the *Code*, the Government should examine the employment equity and service equity progress of universities and colleges as a factor in judging the quality of their operations and the funds they should receive.**

Teachers Should Promote Human Rights

Children and their parents have the right to a teaching environment of equal respect for themselves and their community.

Teacher training courses should include training in human rights as a requirement for certification as a teacher. Teachers already in the school system should be required to take a professional development course in human rights within a specific time period.

In order to value *all* students with genuine respect, a teacher needs to support the equal human rights of every group a student may belong to. A teacher cannot be allowed to promote discrimination contrary to the *Code* against a group to which one of his or her students may belong, for example, a teacher who inside or outside the classroom supported anti-semitic or white supremist causes.

RECOMMENDATION (79):

- **Teacher training courses should include training in human rights as a requirement for certification as a teacher.**

Hiring Policies of Schools, Colleges and Universities

An effective way of promoting human rights is by one's own conduct. The education system must, by its own conduct, take a leadership role to two areas:

The first is in hiring and promoting members of disempowered groups. The second is in providing its services to students in an equitable manner. School Boards, colleges and universities should be required to implement a clear, effective plan to overcome discriminatory employment practices and to have teachers and administrators, at all levels, reflect the full community.

Students learn by what they see happening more than by what they are told is supposed to happen. When people of colour, when people with disabilities, when women are not seen in a fair and representative way at every level in the education system, students pick up on prejudice and stereotypes against these groups, which they then carry with them as they start on the rest of their lives.

In addition, the quality of an education system declines when it fails to benefit from the knowledge, skills and experience of all the groups who make up Ontario.

School superintendents and persons responsible for decisions to hire and promote should be accountable and be judged on their performance in meeting employment equity goals. It should be a specific and significant part of their job performance appraisal.

RECOMMENDATION (80):

- **School Boards, colleges and universities should be required to implement a clear, effective plan to overcome discriminatory employment practices so that teachers and administrators at all levels reflect the full community.**

Providing Equitable Services to Students

If significant progress is to be made in overcoming discrimination, the education system must play a key role.

If children at school are treated with equal respect and equal expectations, they have a chance to overcome the stereotyping and prejudice common in our society. Children from groups who experience discrimination can be helped to develop self esteem and confidence so as to see themselves and their community as equal members of society.

The education system has a responsibility to overcome discrimination in the services they provide. Schools, colleges and universities should implement a clear plan of positive action to make sure that students from groups that experience discrimination derive equal benefit from the services the institution provides.

This plan should include monitoring to see how services are being used. For example, are students of colour fairly represented in all courses, at all levels and with equal success? Are female students participating equally in non-traditional courses and in sports opportunities? Are students with disabilities integrated successfully with their peers?

Groups who are not currently benefitting equally from the education system should be given a key role in developing, implementing and monitoring the service equity plan.

In Saskatchewan many school divisions, in cooperation with the Saskatchewan Human Rights Commission, have implemented Education Equity Plans, aimed at redressing the high drop-out rate of Aboriginal students. The Plans, which now cover 75,000 students, include such measures as: cross-cultural training for school staff, changes in the school curriculum, development of anti-racism policies, increased hiring of Aboriginal teachers. Public hearings, at which interested persons can make submissions, are held to allow the Commission to review and ask questions on what progress has been made in implementing the Education Equity Plan.[92]

RECOMMENDATION (81):

- **The Ministry of Education should require School Boards, in partnership with the community, to develop and implement service equity plans to ensure that all students receive equitable educational services.**

XXIV. *CONCLUSION: MOVING FORWARD*

The new human rights enforcement system proposed by the Task Force has a number of components which must function interdependently in order for the overall system to be effective.

First, a community based Equality Services Board will provide support and assistance for human rights claimants around the province. Second, the Equality Rights Board will allow claims to be heard in a timely and accessible manner. And third, the Human Rights Ontario will play a strategic and proactive role to advance equality rights.

The system will benefit from the energy and expertise of equality seeking groups, who for the first time will be able to initiate significant cases.

Those groups who have responsiblity under the *Code* to implement equality rights will be encouraged to take a proactive and positive approach so as to prevent the need for claims to be filed.

The government has a particularly crucial role to play by setting an example in promoting equality, both in its employment practices and in the delivery of services.

The system put forward by the Task Force can only work as an integrated whole. If one part is omitted, the ability of the overall system to function effectively will be jeopardized. For example, without advocacy services the rights in the *Code* will mean little. In addition, the Tribunal will be unable to function efficiently if numbers of unprepared claims come forward for a hearing.

Similarly, if the Human Rights Ontario is not able to play a strategic, proactive role to overcome broad patterns of discrimination, then endless individual claims will continue to come forward.

The Task Force emphasizes, therefore, that the system it recommends must be implemented and funded as a coherent whole.

In the view of the Task Force, the open process it has recommended, with access to hearings and community based assistance for claimants, will mean claims are handled and resolved in a more timely and efficient manner.

More claims will, without question, have a hearing. And, in the view of the Task Force, so they should. The present 96% rate of cases not being heard is simply no longer acceptable.

If a large number of serious, valid human rights cases come to the Human Rights Tribunal and the Tribunal cannot handle them, this will be a message that either more effective proactive measures must be taken to overcome discrimination, or else the resources of the Human Rights Tribunal must be increased.

If serious cases of discrimination come forward, they must be dealt with. Cutting off access to rights is not the solution.

No-one would suggest denying people access to the regular court system because the volume of property rights cases was too high.

Access to the proposed human rights enforcement sytem must be assured, as must access to advocacy services for claimants.

The Task Force calls for the support and commitment of all parties in the Legislature to implement the new system so that the rights of all Ontarians are respected.

XXV. WHAT HAPPENS NOW - PLANNING THE REFORM

The Task Force believes that important steps can now be taken to plan and implement the proposed reforms.

A Role for the Equality Seeking Community

In the view of the Task Force, gains in human rights can only be made with the participation of the groups affected. An open, participatory process is therefore essential in the follow-up to this Report.

Equality seeking groups will want to, and should, play a key role in helping to implement changes to the Code and the enforcement system. They will, however, be unable to play that role unless some resources are provided.

The Task Force believes that the government should provide immediate project funding to ensure meaningful and constructive community participation in the change process.

The project should allow equality seeking groups to monitor the implementation of human rights reform.

The Human Rights Follow-Up Project could include the following objectives:

- bring together representatives of the diverse equality seeking groups to discuss the Task Force Report and implementation of human rights reform,
- develop a mechanism or coalition to enable equality seeking groups to meet regularly and work together on human rights reform,
- facilitate the sharing of information and strategies,
- promote consensus and solidarity,
- promote effective communication between the government and equality seeking groups and effective participation of equality seeking groups in the reform process,
- monitor the implementation of human rights reform on behalf of equality seeking groups, and

- organize a "Human Rights Audit Meeting" of representatives of equality seeking groups in September 1992 and every six months thereafter until the reforms have been successfully implemented.

RECOMMENDATION (82):

- **The government should fund a Human Rights Follow-Up Project to allow equality seeking groups to work together and play a meaningful role in the implementation of human rights reform.**
- **The Project should allow for a meeting of equality seeking groups from across the province in September, 1992 and every six months thereafter to review progress to date.**

Role for the Respondent Community

The Task Force has strongly recommended that a proactive approach be adopted to overcome broad patterns of discrimination in Ontario. In the system proposed by the Task Force, the Commissioner for compliance advice will work with the respondent community to assist them in developing proactive approaches.

Organizations representing employers, and service and accommodation providers can play an important role in preparing for a new, more proactive human rights system in Ontario. They can begin discussions within their memberships and with the government on how best to relate to and work with a revitalized Human Rights Ontario that will have a very different role than in the past.

The focus of Human Rights Ontario will be on broad, proactive initiatives to achieve equality rights for all Ontarians. By developing a mechanism to communicate with and work with Human Rights Ontario, the respondent community will help ensure a productive and useful relationship.

Employers and service and accommodation providers who have successful experience in implementing equality rights can play a valuable role in the proposed new human rights system. They can contribute their expertise as members of the Human Rights Council or the Advisory Committee to the Equality Rights Tribunal or as Commissioner for Compliance Services.

RECOMMENDATION (83):

- **Employers and service and accommodation providers should begin discussions within their sector and with government on how to participate in a new, revitalized human rights system. These persons should meet with the Government and other to effectively participate in the reform process.**

A Role for the Ontario Human Rights Commission

Coordination also needs to be planned with the Ontario Human Rights Commission which has the difficult task of preparing itself for a very substantial organizational change while still responsible for carrying out an important legislative mandate of handling the current cases.

The Task Force believes that there are many recommendations for reform which are contained in the report that do not require legislative amendments, some of which were endorsed already by the Commission in its brief to the Task Force.

The Task Force believes it is particularly important that the Commission seek to repair its relationship with the equality seeking community, and as the Commission's brief stated, to empower and recognize the expertise and role of equality seeking groups in the claims system.

The Commission must also build links to the community responsible for ensuring equality.

It should also work with the Commission employees' bargaining agent OPSEU in order to plan for the labour relations concerns which arise from the Report and this Plan.

RECOMMENDATION (84):

- **The Ontario Human Rights Commission should study and consider this report in order to promptly implement where appropriate the recommendations for reform which do not require legislative amendments.**
- **The Commission should also work with the Human Rights Follow Up Project and the representatives of the respondent community to discuss implementation issues as they affect the Commission.**
- **The Commission should adopt a more open, cooperative relationship with community groups and individuals with human rights expertise and allow them to prepare and develop their own claims, and participate in direction of the investigation, settlement and appointment of the Board of Inquiry.**

- **The Commission should interpret section 36 of the Code more liberally. A hearing should be considered the normal "appropriate procedure." The "evidence" which "warrants an inquiry" should be where it discloses reasonable grounds of a Code violation. This taest would require a less extensive investigation.**

- **The Commission should also work with the Commission employees' bargaining agent OPSEU in order to plan for the labour relations concerns which arise from the Report and this Plan.**

Role for Government

The changes which are proposed in this report are substantial. They affect a number of existing bodies and cover a number of different Ministries. including the Ministry of Citizenship, Ministry of Labour, Management Board Secretariat, and Treasury Board.

In light of this cross-Ministerial responsibility, the Task Force proposes that the Government name a senior person in the Cabinet Office to be overall responsible for coordinating and directing the implementation of the reform process and ensuring that it proceeds quickly and with the cooperation of all the relevant Ministries and bodies. This Cabinet Office reform coordinator would work closely with the Deputy Minister of Citizenship; the Human Rights Follow-Up Project; the Commission; any representatives of the respondent community who are involved in the reform process

Coordination should be planned between a reformed human rights system, the new Employment Equity system, and existing equality agencies, such as the Pay Equity system, the Anti-Racism Secretariat, the Office for Disability Issues, the Ontario Women's Directorate.

Coordination will help make access to these different systems as clear and simple as possible. Coordination will also help derive maximum benefit from available resources.

RECOMMENDATION (85):

- **The Government should name a senior person in the Cabinet Office to be overall responsible for coordinating and directing the implementation of the reform process and ensuring that it proceeds quickly and with the cooperation of all the relevant Ministries, equality agencies and other bodies. This coordinator will work closely with all interested groups,including those identified in this Plan. This coordinator would work closely with the Deputy Minister of Citizenship.**

Role for the Ontario Liberal Party and the Ontario Progressive Conservative Party

The Task Force recalls the vigour with which the two opposition parties called for a reform process that would achieve quick results.

The passage of the necessary legislation to implement the reforms must be done as quickly as possible in order to create a new system as quickly as possible.

RECOMMENDATION (86):

- **The Task Force calls on the Ontario Liberal Party and the Progressive Conservative Party of Ontario to take all necessary steps with the governing New Democratic Party to ensure the speedy passage of the necessary legislation.**

Making the Transition - a Proposed Timetable

Because of the urgent need to reform Ontario's human rights system, the government gave the Task Force a very short time frame to complete its mandate. The government indicated that it would treat the recommendations of the Task Force with great seriousness and would move speedily to implement reform.

Some of the reforms recommended by the Task Force could begin to be implemented immediately; others could be gradually phased in. Other recommendations can only be implemented after the government has amended the Code.

RECOMMENDATION (87):

In the view of the Task Force, the following actions could and should be taken by:

August 1, 1992

- **The follow up project should be funded to allow equality seeking groups to participate in the reform process.**

September 1, 1992.

- The Premier on behalf of the Government should make a firm commitment to the expeditious implementation of this report in partnership with the two opposition parties.
- The government should start discussions with the Pay Equity Tribunal and the Employment Equity Commissioner to set up a joint Tribunal.
- The lead Minister and person designated in the Cabinet Office to oversee the reform should act on the recommendations set out in the report which apply to Government itself (Section of Proactive Role for the Government) and direct all government ministries and agencies to review the pending human rights cases against them. Direction should be given to take a proactive equality rights approach in any future action on pending cases.

September 30, 1992

- The Premier of Ontario should consult widely with appropriate people and name the three persons with outstanding human rights records as the Equality Rights Appointment Committee.

By November 30, 1992,

- The Government should establish the Equality Services Board which could be working on establishing the standards and training for the law advocates and other matters. These advocates could be retained to act under the old system.

In the Fall Session, 1992

- The Government should bring in the necessary legislation which is needed to implement the report.

No later than the Spring Session, 1993

- The Government should work with the Leaders of the Opposition to ensure that the bill is passed.

By September 30, 1993

- **The new enforcement system should be reasonably operational.**

ENDNOTES

1. Bob Rae, Premier of Ontario, in Statement to the Legislature in response to the Report of the Special Advisor to the Premier on Race Relations.

2. People of Aboriginal ancestry include all individuals and groups off reserves that are not a part of the Assembly of First Nations Chiefs in Ontario.

3. Among the Aboriginal people and organizations at public meetings were N. Swakomok, the Native Friendship Centre, the First Nations Student Association of the University of Windsor, and Algoma University College.

   As Bernice Dubec of the Wequedong Lodge of Thunder Bay stated, "Native people are frustrated and discouraged by the human rights system and do not even bother to file a complaint. Aboriginal people are sceptical of the human rights system to adequately resolve the discrimination that they encounter in the region." Written brief presented to the Task Force at the Thunder Bay public meeting on April 28, 1992.

4. See also Sampson, Fiona, *An Analysis of the Relationship between First Nations and the Ontario Human Rights Commission*, August 1991, released by the Ontario Native Council on Justice.

5. See Darlene M. Johnston, *Canadian Journal of Law and Jurisprudence,* Native Rights as collective Rights: A question of Group Self Preservation, January 1989.

6. See *The Canadian Human Rights Act: Changes Requested on Behalf of the Native Women's Association of Canada*, February 2, 1992.

7. See Rudin and Russell, *Native Alternative Dispute Resolution Systems*.

8. See *The Canadian Human Rights Act: Changes Requested on Behalf of the Native Women's Association of Canada*.

9. R.S.Q. 1977, c. C-12

10. Ibid.; s. 101.

11. *Public Service Act*, R.S.O. 1990, c. P. 47.

12. *Crown Employees Collective Bargaining Act*, R.S.O. 1990, c. C.50.

13. *Robichaud v. The Queen* (1987), 40 D.L.R. (4th) 577 at 582 (La Forest J).

14. Ibid., at 584.

15. *Heerspink,* 3 C.H.H.R. D/1163 at D1166 (Lamer J.).

16. *Brooks v. Canada Safeway Ltd*, [1989] 1 S.C.R., 1238 (Dickson, C.J.).

17. s. 2 of *Employment Equity Act* R.S.C. 1985 (2d Supp), c. 23, [1986, c. 31, assented to June 27, 1986, proclaimed in force Augus 14, 1986].

18. Research by the Inter-clinic Committee on Human Rights Law Reform, Submission No. 2, May 1992.

19. ibid, p. 3

20. **Submission Number Two - May 1992.**

21. Porter, Bruce, *From Administered Rights To Claimed Rights: A Community Empowerment Model of Rights Enforcement,* (prepared by Centre for Equality Rights in Accommodation for the Human Rights Code Review Task Force).

22. Bridges v. Ontario Human Rights Commission (unreported) December 17, 1991, Ct File No. 157-91 (J.W. O'Brian).

23. Ontario Human Rights Commission, Submission to Ontario Human Rights Code Review Task Force, May 5, 1992; at pages 11 & 12.

24. Section 48.

25. As one author explains:

    .... The rule-making process can be both fairer and more efficient than case-by-case adjudication. Rule-making proceedings can put all affected parties on notice of impending changes in regulating policy, and give them an opportunity to be heard before the agency's portion has crystallized. A rule can also resolve in one proceeding issues which might remain unclear for years if the case-by-case approach were followed. A clear general rule can produce more rapid and uniform voluntary compliance.... than standards which are linked to the facts of the particular cases. Gellhoir, Ernest & Bayer, Barry *Administrative Law and Process in a Nutshell*, Culest Publishing Co. 1982) at 237-238.

26. *Canadian Human Rights Act*, R.S.C. 1985, c. H-6.

27. *Americans With Disabilities Act of 1990*, Pub.L. No. 101-336, 104 Stat. 327 (1990).

28. See for example, Bergman, Patricia and Baker, David, *The Ontario Human Rights Code: Dealing with Systemic Discrimination*, May 21, 1992. pp. 17, 28-31.

29. Submission (of Research) to Ontario Human Rights Code Review Task Force made by the Honourable Robert F. Reid, Q.C., April 30, 1992, p. 16.

30. R.S.O. 1990, c. R-21

31. See Bill on *Employment Equity Act*, 1992, S. 22.

Audit and Enforcement by the Commission

Commission audit
22 (1) The Employment Equity Commission may conduct an audit of an employer to determine whether the employer is complying with Part III.

Audit power
(2) In the course of an audit, an employee of the Commission,

(a) may enter any place at any reasonable time;
(b) may request the production for inspection of documents or things that may be relevant to the audit;
(c) upon giving a receipt therefor, may remove from a place documents or things produced under clause (b) for the purpose of making copies or extracts and shall promptly return them to the person who produced them; and

(d) may question a person on matters that are or may be relevant to the audit subject to the person's right to have counsel or some other representative present during the examination.

Identification

(3) When exercising a power of entry, the employee shall produce identification and evidence of his or her employment with the Commission if requested to do so by the owner or occupier.

Restriction on power of entry: dwellings

(4) The employee shall not enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under subsection (6).

Warrant for search

(5) If a justice of the peace is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of an audit, the justice of the peace may issue a warrant authorizing an employee of the Commission named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for entry

(6) If a justice of the peace is satisfied on evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that an employee of the Commission may carry out his or her duties under this Act, the justice of the peace may issue a warrant authorizing such entry by the employee named in the warrant.

Execution and expiry

(7) A warrant issued under this section,

(a) shall specify the hours and days during which it may be executed; and

(b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Admissibility of copies

(8) Copies of, or extracts from, documents and things removed from premises in the course of an audit and certified as being true copies of, or extracts from, the originals by the person who have made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

32. Mike Huck v. Cdn. Odeon Theatres Ltd., (1981) 2 C.H.R.R. D/351 (Sask. Bd. of Inquiry); *Cdn. Odeon Theatres Ltd. v. Human Rights Commission (Sask.)*, [1985] 6 C.H.R.R. D/2682 (Sask C.A.), 3 W.W.R. 717, 18 D.L.R. (4th) 93.

33. Henry, Frances and Ginzberg, Effie, *WHO GETS THE WORK: A Test Of Racial Discrimination In Employment*, (prepared by The Urban Alliance on Race Relations and The Social Planning Council of Metropolitan Toronto), January, 1985.

34. Projet-logement 1990, Quebec Human Rights Commission.

35. The Queen v. Bernard Salituri, June 22, 1990, Case number 500-27-106114-896; The Queen v. Leo Poirier, November 22, 1990, Case number 505-27-018437-898.

36. Bill on *Employment Equity Act, 1992*, s.18.

37. *Code*, section 26.

38. *Pay Equity Act*, R.S.O., 1990 Ch. P.7; Section 32(4)

39. See for example, *Darlene Ouimette v. Lily Cups Ltd., Paul Sayer and Al Gemottine* (1990), 12 C.H.R.R. D/19.

40. *Recommendations for a New Limitations Act: Report of the Limitations Act Consultation Group*, March 1991, Min. of Attorney General.

41. *Central Trust and Eastern Trust Co.* v. *Rafuse*, [1986] 2 S.C.R. 147; [1988] 1 S.C.R. 1206.

42. The *Labour Relations Act* R.S.O., 1990, Ch. L.2; section 91(5)

43. *Board of Governors of Seneca College v.Bhadauria,* [1981] 2 S.C.R. 181.

44. Christie v. York Corp. [1940] S.C.R. 137).

45. The Honourable Robert F. Reid Q.C.; Submission (of Research) to the Ontario Human Rights Code Review Task Force, p. 3.

46. *Robichaud* et *al* v. *The Queen* (1987), 40 D.L.R. (4th) 577.

47. Brief submitted to the Task Force by the Wei Fu Ad Hoc Committee.

48. Section 318 of the *Criminal Code* provides:

(1) "Everyone who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(2) In this section, "genocide" means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,

a. killing members of the group, or
b. deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

(3) No proceeding for an offence under this section shall be instituted without the consent of the Attorney General.

(4) In this section, "identifiable group" means any section of the public distinguished by colour, race, religion or ethnic origin.

49. Section 319 of the *Criminal Code* provides:

(1) Everyone who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of,

a. an indictable offence and is liable to imprisonment for a term not exceeding two years; or
b. an offence punishable on summary conviction.

(2) Everyone who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of,

a. in indictable offence and is liable to imprisonment for a term not exceeding two years; or
b. an offence punishable on summary conviction.

(3) No person shall be convicted of an offence under subsection (2),

a. if he establishes that the statements communicated were true;
b. if, in good faith, he expressed or attempted to establish by argument an opinion on a religious subject;

c. if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds, he believed them to be true, or

d. if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred toward an identifiable group in Canada.

(4) Where a person is convicted of an offence under section 318 or subsection (1) or (2) of this section, anything by means of or in relation to which the offence was committed, on such conviction, may, in addition to any other punishment imposed, be ordered by the presiding provincial court judge or judge to be forfeited to Her Majesty in right of the province in which that person is convicted, for disposal as the Attorney General may direct.

(5) Subsections 199(6) and (7) apply with such modifications as the circumstances require to section 318 or subsection (1) or (2) of this section.

(6) No proceeding for an offence under subsection (2) shall be instituted without the consent of the Attorney General

(7) In this section, "communicating" includes communicating by telephone, broadcasting, or other audible or visible means; "identifiable group" has the same meaning as in section 318; "public place" includes any place to which the public have access as of right or by invitation, express or implies; "statements" includes words spoken or written or recorded electronically or electromagnetically or otherwise, and gestures, signs or other visible representations. R.S., c. 11(1st Supp.), s.1.

50. See *R. v. Keegstra* (1990) 1 C.R. (4th) 129 (S.C.C.)

51. O.S.S.T.F., District 53 v. Haldimand Bd. of Ed., p. 25

52. "Proposed Reform of the Ontario *Labour Relations Act*: A Discussion Paper from the Ministry of Labour". November 1991, p.44.

53. *Re: Ontario v. Ontario Public Service Employees Union (Kimmel/Leaf)*, (1992) 21 L.A.C. (4th), 129.

54. Section 35.

55. Section 36.

56. *Action Travail des Femmes v. Canadian National Railway Company*, [1987] 1 S.C.R. 1114.

57. Statement to the Legislature by the Honourable Elaine Ziemba, Minister of Citizenship, on the occasion of the tabling of Employment Equity legislation for first reading in the Ontario Legislature. June 25, 1992.

58. *Newfoundland Telephone Company Ltd. v. The Board of Commissioners of Public Utilities*, (S.C.C.) Mar 5, 1992 (unreported).

59. *Statutory Powers and Procedures Act*, R.S.O. 1990 c. S.22.

60. See *Workers' Compensation Act*.

61. *Police Services Act*, R.S.O. 1990 c. P-15, s.86(6) and 89; *Labour Relations Act*, s. 91(3).

62. *Pay Equity Act*, s. 34(3).

63. See for instance section 73(1) of *Workers' Compensation Act*, R.S.O. c. W.11.

64. Section 45(6), as proposed, in the amendments to the *Labour Relations Act*.

65. (see s.30(1) of *Pay Equity Act*.)

66. *Labour Relations Act*, S. 64(2).

67. See s.1(2) of the *Pay Equity Act*.

68. See *Code*, S. 40.

69. Code, s.14.

70. *Robichaud v. the Queen*, 40 D.L.R. (4th) 577 at 585 (per LaForest).

71. Section 41(1)(b).

72. Code section 41 (1) (a).

73. *Pay Equity Act* R.S.O. 1990, ch. P.7, section 25(2)(g).

74. *Code*, section 42.

75. *Pay Equity Act*, R.S.O. 1990 Ch. P.7, section 30 (1); and *Labour Relations Act*, R.S.O 1990, Ch. L.2 s.110.

76. *Statutory Powers Procedure Act*, R.S.O. 1990 Ch. S. 22, section 19.

77. *Code*, Section 44.

78. *Pay Equity Act*, section 26.

79. *Environmental Protection Act*, R.S.O. 1990 c.E-19, s.186(5) - re: individuals $10 000 on first conviction, $25 000 on subsequent convictions and s.187(1) - re: corporations $2 000 on first conviction and $200 000 on subsequent convictions; *Ontario Water Resources Act*, R.S.O. 1990 c.O-40, s.108(1) re: individuals $10 000 on first conviction, $25 000 on subsequent convictions and s.108(2) re: corporations $50 000 on first conviction and $100 000 on subsequent convictions.

80. Section 41(4) of the *Code* states:

> Where, upon dismissing a complaint, the board of inquiry finds that,
>
> (a) the complaint was trivial, frivolous, vexatious or made in bad faith; or
>
> (b) in the particular circumstances undue hardship was caused to the person complained against,
>
> the board of inquiry may order the Commission to pay to the person complained against such costs as are fixed by the board.

81. the 1989 report, *Directions: A Review of Ontario's Regulatory Agencies*, by Robert Macaulay.

82. *Re Ontario and O.P.S.E.U. (Kimmel/Leaf) (1992) 21 L.A.C. (4th) 129;*

83. See Bill on *Employment Equity Act*, 1992, s. 2.

84. *Action Travail des Femmes v. CN*, [1987] 1 S.C.R. 1114

85. *Occupational Health & Safety Act*, R.S.O., 1990; Ch. 0-1, s. 1, s. 8(1), s. 25.

86. See Bill on *Employment Equity Act*, 1992, s. 18.

87. David J. Hulchanski, Ph.D., MCIP, Eric Weir, M.S.W., "Survey of Corporations Owning or Managing Large Numbers of Rental Apartments in Metro Toronto: Requirement of Last Month's Rent Deposit." University of Toronto, Faculty of Social Work, June 9, 1992.

88. Urban Alliance on Race Relations. *A Research Report*. p.12.

89. Ibid.; p. 7.

90. The Report of the Special Advisor to the Premier on Race Relations, (letter dated June 9, 1992), p. 23.

91. Ibid.

92. Education Equity Report 1991, Saskatchewan Human Rights Commission.

SUMMARY OF RECOMMENDATIONS

VII. FIRST NATIONS AND PEOPLES OF ABORIGINAL ANCESTRY

RECOMMENDATION (1):

- **First Nations and people of Aboriginal ancestry should be supported by the Ontario government with resources and a respectful time frame to develop solutions that would effectively prevent the intentional and systemic discrimination which is widespread in Ontario society. Aboriginal women and Aboriginal people with disabilities who face different forms of discrimination must be an integral part of the process.**

IX. ENSURING THE INDEPENDENCE AND COMPENTENCE OF THE NEW ENFORCEMENT SYSTEM

RECOMMENDATION (2):

- **An independent, three-person Equality Rights Appointments Committee, composed of persons highly respected for their human rights expertise and independence, will be named by the Premier in consultation with the equality seeking community, those responsible for ensuring equality, and the responsible Minister.**
- **The Appointments Committee will recommend to the Premier the names of persons to fill the key senior positions in the new human rights enforcement system:**
  - **Human Rights Ontario - the Chief Commissioner and the 5 Commissioners,**
  - **Equality Rights Tribunal - the Chair and the 3 Associate Chairs for Human Rights, Employment Equity, and Pay Equity, and**
  - **Equality Services Board - the Chair and the 12 members.**
- **The Committee will seek out qualified persons who will not only bring expertise, but also reflect the diversity of Ontario's population and geography. The Committee will consult with the responsible Minister concerning the appropriate job descriptions for the positions and ensure that broad outreach measures are taken to ensure a diverse candidate pool.**
- **The Committee will recommend to the Premier the appropriate candidates, and, should the Premier decide not to appoint any recommended person, the Premier will be required to notify the Committee of the reasons for that decision.**

RECOMMENDATION (3):

- **The new Commission, "Human Rights Ontario," the Equality Rights Tribunal, and the Equality Services Board will have full independence. Human Rights Ontario and the Equality Rights Tribunal will report to the legislature through a designated Minister. The Equality Services Board will report to Human Rights Ontario through its Commissioner for Advocacy Services.**

- **The Government's new accountability framework for agencies it funds will be flexible enough to permit Human Rights Ontario, the Equality Rights Tribunal, and the Equality Services Board to be included in a Schedule that guarantees**

    - **their full independence from the Government with respect to their policy-making and administrative support,**

    - **their public accountability for their funding and overall operations, and**

    - **protection for their staff (unionized and non-unionized) by inclusion of these staff in the *Public Service Act* and the *Crown Employees Collective Bargaining Act*.**

X. ACHIEVING THE CODE'S PURPOSE

RECOMMENDATION (4):

The Preamble of the *Code* should be amended as follows to incorporate the almost constitutional importance of the *Code*.

- **Whereas the *Code* is special legislation that has primacy over other laws in Ontario except the Constitution and whereas this special status requires all Ontarians, including the Government and those who enforce and interpret the *Code*, to treat it with special seriousness so as to achieve its near constitutional purpose ...**

RECOMMENDATION (5):

The Preamble to the *Code* should be amended to include the following:

- **Whereas historic systemic discrimination has been practised against members of certain groups in Ontario because of their race, ancestry, place of origin, colour,**

ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, disability or receipt of public assistance;

- **Whereas at different times many of these groups have been denied the basic rights of citizens, such as the right to vote, the right to enter professions, the right to pursue an education, the right to purchase property, the right to immigrate, the right to rent accommodation, the right to obtain employment, the right to enter public places;**

- **Whereas these groups continue to experience discrimination, stereotyping and harassment *and*/or are disadvantaged through not being included or represented in a fair and equal way in the institutions, opportunities and activities of Ontario society;**

- **Whereas the *Ontario Human Rights Code* is positive remedial legislation enacted to achieve equality rights for members of these groups;**

- **Whereas right to equal treatment requires that positive measures be undertaken;**

- **Whereas persons involved in the provision of services, accommodation, employment, contracts, unions and vocational associations have a responsibility to take measures to overcome discrimination in these areas and provide these opportunities in a manner that accommodates differences and is inclusive and respectful to all groups who make up Ontario;**

- **Whereas the Province of Ontario and the Government of Canada have ratified and are bound by International Human Rights Covenants ...**

XI. PROVIDING SUPPORT FOR CLAIMANTS

RECOMMENDATION (6):

- **A province-wide system of community based publicly funded advocacy services should be set up to assist human rights claimants.**

- **An independent Equality Services Board should be established which will have operational responsibility for planning, coordinating and delivering the advocacy services needed by the claimant community in Ontario.**

- **The advocacy services provided should include Equality Rights Centres around the province, special centres of expertise, partnerships with community and advocacy groups.**

- **The Board should establish a Significant Case Fund which will allow groups to initiate test cases to advance the equality rights of groups protected by the *Code*.**

- **The Board should report to the Commissioner for Advocacy Services. The Board should provide the Commission with an annual report to be included in the Commission's annual report to the Legislative Committee on Equality.**

- **The Commissioner for Advocacy Services should be overall accountable for the proper functioning of the claimant advocacy services system. The Commission should ensure that a significant portion of its budget each year is set aside for the necessary funding of claimant advocacy services.**

- **Training courses and a system of certification should be established through the Community College system for Equality Rights Lay Advocates who will be primarily responsible for the delivery of advocacy services to claimants.**

- **Any communication between a human rights claimant and a community human rights employee, employed at an agency funded by the Equality Services Board and assisting that person with her or his claim, shall be treated as confidential.**

- **Specialized expertise should be created or existing expertise funded for major areas of discrimination such as race, gender, disability, lesbian and gay, age, housing, record of offences.**

- **The Equality Services Board should be responsible for certifying and funding this expertise.**

XII. REVITALIZED HUMAN RIGHTS COMMISSION - "HUMAN RIGHTS ONTARIO"

RECOMMENDATION (7):

- **The Task Force recommends that Human Rights Ontario be given the express power to issue legally binding rules and regulations in order to carry out its mandate to advance full and effective achievement of the *Code*'s purposes.**

- **Regulations should be passed only if they have been the subject of full public consultations conducted by Human Rights Ontario. Such public consultations would include equality seeking groups and persons responsible for ensuring equality. The Government should participate in these hearings in its capacity as a major employer, service provider, law and policy maker and body responsible for the public purse. In this way, all of Government's various concerns would be identified in a public** way.

RECOMMENDATION (8):

The new Commission, "Human Rights Ontario", should

- **maintain its strong, public interest mandate to advance human rights in Ontario; to act on the side of equality and against discrimination as the public conscience;**
- **no longer have a mandate to process, investigate, or settle individual human rights complaints;**
- **where necessary, investigate and then initiate key, systemic cases and seek broad remedies to ensure compliance by those responsible for providing equality;**
- **monitor and report on the overall functioning of human rights enforcement in the province;**
- **research, document, hold public inquiries, report on, and take initiatives to overcome major problems of discrimination;**
- **promote, assist, and encourage public agencies, business, and other organizations to engage in practices that proactively advance the cause of equality rights enforcement;**
- **promote the establishment of partnerships between those persons responsible for ensuring the equality of treatment of Ontarians and those Ontario citizens who require the protection of the *Code* in order to facilitate the establishment of practices and programs that proactively advance the cause of equality rights enforcement;**
- **work with the Employment Equity Commission to coordinate responsibilities in the area of employment;**
- **promote the empowerment of equality seeking groups to speak for themselves and represent themselves;**
- **maintain close liaison with community advocacy and specialized bodies working for the advancement of human rights and recognize their expertise;**
- **provide funding to the Equality Services Board to provide appropriate services to human rights claimants around the province and special funding for community**

groups to bring forward significant cases that will have a major impact on advancing equality rights for disadvantaged groups;

- **have the power, in consultation with the affected group and in coordination with other community initiatives, to investigate, file and pursue systemic discrimination complaints before the Tribunal and intervene as appropriate in the public interest;**
- **have the power to consult broadly and draw up policies, guidelines, and regulations to more effectively overcome problems of discrimination;**
- **monitor and report on the laws, policies, and practices of the provincial and municipal governments and their compliance with Canada's international treaty obligations in the field of human rights;**
- **plan and develop educational material and educational initiatives in partnership with equality seeking groups and those responsible for ensuring equality;**
- **with respect to services, provide assistance and information for the community responsible for ensuring equality through the Compliance Services Unit reporting to the Commissioner of the same name; and**
- **appear before a legislative Committee on Equality Rights each year, as well as on an immediate urgent basis if required, to report on**
  - **the state of human rights in the province,**
  - **its own and others activities in reducing the amount of discrimination in the province,**
  - **its recommendations for necessary changes to increase the rate at which discrimination is being reduced in the province, and**
  - **any necessary funding requirements for the proper functioning of the overall human rights enforcement system.**

RECOMMENDATION (9):

Six Commissioners should be named, each with specific areas of responsibility:

- **the Chief Commissioner with overall leadership and coordination responsibilities;**

- **Commissioner Responsible for Proactive Systemic Initiatives;**
- **Commissioner Responsible for Education;**
- **Commissioner Responsible for Policy and Research;**
- **Commissioner Responsible for Compliance Services; and**
- **Commissioner Responsible for Advocacy Services.**

RECOMMENDATION (10):

- **The new Commission, with its more focused role, must still ensure that its service will involve and be informed by the concerns of all Ontario's regions.**
- **The new Commission must ensure that barriers to its services are eliminated. Its regional offices must be physically accessible. Its services must be available in formats which are understandable by all its consumers and not just those who read English.**

RECOMMENDATION (11):

- **The Chief Commissioner and Commissioners should have a demonstrated commitment and proactive expertise in the field of human rights and the empowerment of members of equality seeking groups. They should have public leadership and communication skills, and familiarity with equality issues and the operations of business, government, and community organizations.**
- **The Commissioner for Compliance Services should have a background of demonstrated and effective proactive human rights implementation in the field of employment accommodation or services.**
- **The Chief Commissioner and Commissioners should be appointed through the independent process of the Equality Rights Appointments Committee after consultation with equality seeking groups and those responsible for ensuring equality.**
- **The representativeness of groups protected by the *Code* and the different regions of the Province should be considered in the appointment of the Chief Commissioner**

and Commissioners.

- The Chief Commissioner and Commissioners should have a term of five years with an option to renew for a further 5 and their terms should be staggered as much as possible to ensure continuity.
- The Chief Commissioner should be consulted by the Equality Rights Appointments Committee when the Committee is considering reappointment of a Commissioner.

XIII. FILING A HUMAN RIGHTS CLAIM

RECOMMENDATION (12):

The *Code* should be amended as follows:

- Where a person believes that her right to equality under the *Code* has been infringed, the person may file a claim.
- A group of individuals may file a joint claim where their claims are against the same respondent or have questions of fact or law in common.
- An individual or group or the Commission may file a claim where they believe the *Code* has been infringed.

RECOMMENDATION (13):

- If the Tribunal Registrar considers a claim to be outside the jurisdiction of the *Code*, or without any merit, the Registrar should so advise the claimant promptly and no later than five days after filing the claim. If the claimant does not accept this view, the Registrar should submit the claim to the Associate Chair responsible for the Adjudication Section for a decision as to whether the claim should be accepted or not. If the Associate Chair decides that the claim is outside the jurisdiction of the *Code*, the claimant should be advised within 15 days of filing the claim and have the right to appeal this decision at a hearing before a human rights adjudicator. The decision of this adjudicator is final.

RECOMMENDATION (14):

- The wording "the subject-matter of the claim is trivial, frivolous, vexatious, or made

in bad faith" should be removed from the *Code*.

RECOMMENDATION (15):

- **The six-month time limit for filing claims under the *Code* should be changed to the two-year limit to be consistent with the proposals for a new *Limitations Act*, with discretion for the Tribunal to accept claims beyond two years, if the Tribunal is satisfied that the delay was in good faith and no substantial prejudice will result to any person affected by the delay.**

RECOMMENDATION (16):

- **Where a person alleges that they have suffered any negative action contrary to the anti-reprisals section of the *Code*, the burden of proof that any respondent did not act contrary to the *Code* should be upon the respondent.**

XIV. OTHER CLAIM ROUTES - CIVIL AND CRIMINAL

RECOMMENDATION (17):

- **Human rights claims should continue to be decided by tribunals with expertise in human rights. The *Code* should not be changed to allow claims to go to the courts as civil actions.**

- **If the system the Task Force is recommending is not put in place or does not have sufficient resources to operate satisfactorily, so that claimants do not, in fact, have real access to a hearing, the option of allowing human rights cases to go directly to the courts as civil actions should be reconsidered.**

RECOMMENDATION (18):

- **The Task Force recommends that the Ontario government negotiate with the federal government to:**
  - **make a *Criminal Code* offence malicious acts of discrimination against persons the *Human Rights Code* is designed to protect and**

- **make a more serious category for a criminal to commit a *Criminal Code* offence like assault or theft where it is committed with wilful intention to discriminate.**

XV. OTHER CLAIMS ROUTES - LABOUR ARBITRATION

RECOMMENDATION (19):

- **The *Labour Relations Act* should be amended to provide that the protections in the *Human Rights Code*'s against discrimination in employment are deemed to be included in all collective agreements and enforceable through the grievance and arbitration procedure.**

- **Union and management representatives involved in the grievance and arbitration procedure and union and management members of arbitration boards should receive human rights training.**

RECOMMENDATION (20):

- **The Government should undertake an immediate review of all specialized collective bargaining statutes and ensure that amendments, similar to those proposed to the *Labour Relations Act*, which extend the right to enforce the *Human Rights Code* prohibits through the respective grievance and arbitration process are enacted.**

- **All Task Force recommendations with respect to the certification, training, powers and procedures of arbitrators under the *Labour Relations Act* should be implemented to apply equally to arbitrations under any of the province's specialized collective bargaining statutes.**

RECOMMENDATION (21):

- **Only arbitrators who have been certified as having human rights expertise by the Equality Rights Tribunal through its Resource and Training Section may arbitrate a matter under a collective agreement which raises a *Code* discrimination issue. Initial and ongoing training and certification should be provided by this Section at a fee.**

RECOMMENDATION (22):

- **The union and the employee should be able to file a claim either as a grievance or with the Tribunal.**

RECOMMENDATION (23):

- **If a human rights claim under the *Code* has already been fully dealt with under the Labour Relations process by a certified arbitrator and in accordance with the equality guarantees and remedial relief provided under the *Code*, a Vice-Chair of the Equality Rights Tribunal may dismiss the claim.**

- **All collective agreements include a provision which would give an arbitrator under a collective agreement the power to dismiss a grievance which was brought by or on behalf of a person or the union when the person or the union had the same matter as raised in the grievance dealt with fully and properly by the Equality Rights Tribunal and there were no rights or remedies available under the collective agreement but unavailable under the *Code*.**

RECOMMENDATION (24):

- **Human Rights Ontario should only be entitled to seek to represent the public interest if a claim comes before the Tribunal and issues of public interest are raised by the claim.**

RECOMMENDATION (25):

- **The *Labour Relations Act* should be amended to provide that arbitrators acting under the deemed *Human Rights Code* prohibitions in collective agreements will have the same remedial powers as those proposed for the Tribunal under the *Code*.**

RECOMMENDATION (26):

- **In non-unionized workplaces, Human Rights Ontario should encourage employers to set up fair and effective internal procedures for the resolution of workplace**

human rights claims which are developed in partnership with their employees or negotiated with their unions; and

- **Employees should have the option of using either internal workplace human rights procedures or filing a claim with the Tribunal.**

XVI. EQUALITY RIGHTS TRIBUNAL

RECOMMENDATION (27):

- **All claimants should have direct access to a hearing to assert their claim for equality rights.**

RECOMMENDATION (28):

- **The new enforcement system requires a permanent expert Tribunal.**

RECOMMENDATION (29):

- **The Task Force recommends that a permanent, full-time Equality Rights Tribunal be established to deal with human rights, pay equity and employment equity cases.**
- **An independent Tribunal Advisory Committee, representative of all the parties and interests who are served by the Equality Rights Tribunal, should monitor the effective operation and accessibility of the Tribunal and provide advice to the Chair (but not concerning specific cases). Care should be taken to ensure equality seeking groups, dealing with human rights grounds and areas not covered by employment and pay equity are represented on the Advisory Committee.**
- **The Chair of the Equality Rights Tribunal should be responsible for the overall functioning of the Tribunal and three Associate Chairs should be responsible respectively for adjudication human rights, employment equity and pay equity cases.**
- **A Panel of Vice-Chairs (Adjudicators) should be certified to hear cases in one or more of the three areas on the basis of their particular expertise for one or more areas. They should be appointed by the Tribunal Chair, in consultation with the relevant Associate Chair and the Tribunal Advisory Committee.**

- **Training should be provided where necessary to encourage the recruitment of candidates from diverse background.**

RECOMMENDATION (30):

- **The *Code* should require adjudicators to take all reasonable steps to ensure that claims are dealt with expeditiously and fairly and that inquiry and decision-making into a claim is conducted in an understandable, straightforward and not unduly legal or technical way.**

RECOMMENDATION (31):

- **An Associate Chair, Mediation, heading a separate Mediation Section of the new Tribunal should be responsible for providing mediation services to bring about fair and effective settlements of human rights claims.**
- **Use of mediation services should be facilitated, but should be voluntary.**
- **Persons providing mediation services should:**
  - **be knowledgeable about and supportive of the principles and purpose of the *Code*,**
  - **guide the parties to reach a settlement which complies with the *Code*,**
  - **be aware of and sensitive to power imbalance between the parties in a case,**
  - **be respectful towards persons who experience discrimination.**
- **Settlements in human rights cases do not need to be approved by the Tribunal but could be challenged if they were obtained by undue coercion or other unconscionable means.**
- **Persons involved in mediating claims should not be required to give information during a hearing.**
- **Information on settlements should be public, but with discretion allowing confidentiality to be protected when requested and when considered appropriate by the mediator, such as in a sexual harassment or AIDS case.**

- **Various options, such as using community mediation services, should be permitted, provided they meet the necessary standards.**

- **A time limit of 45 days should be set for completing settlement, with an extension possible if requested by both parties and the mediator believes further mediation services would be appropriate.**

- **Settlements should be registered with the Tribunal so that if the terms of the settlement are not respected, they can be enforced by the Tribunal as if they were a breach of the Act. If a person claims that the settlement was reached under duress, the Tribunal could decline to enforce the settlement.**

- **If settlement efforts are unsuccessful, the parties should have a right to a hearing before an adjudicator.**

RECOMMENDATION (32):

- **The position of Registrar should be established with responsibility to administer the fair, accessible and effective functioning of the Tribunal.**

- **Deputy registrar positions for human rights, employment equity and pay equity should be established and trained intake officers and other staff provided.**

- **The functions of the Registrar should include:**

  - **administering the Tribunal;**

  - **administering the filing and handling of claims throughout the Tribunal process;**

  - **assigning intake staff to assist people in filing claims who would make sure the rules for the filing of responses and disclosure are followed;**

  - **responsibility for establishing case management procedures to ensure cases are moved through the system fairly and expeditiously;**

  - **general administrative responsibility for ensuring the adjudicative and settlement process is accessible to the public and particularly to unrepresented claimants and respondents and to those who are disadvantaged because of disability, literacy problems, social and economic disadvantage, cultural differences;**

- ensuring claims are prioritized where there are more claims to hear than adjudicators available or where there is a need to have it heard quickly, e.g. an AIDS case;

- ensuring that any necessary accommodation needs are identified and met, such as the use of tapes or interpreters;

- ensuring claims are served and appropriate notices, if any, are posted;

- reviewing claims as they are initially filed to determine if they are within jurisdiction or on their face disclose a violation of the *Code*. If they did not, the Registrar would refer the claim to an Associate Chair for a decision to dismiss. This decision could be appealed to a hearing presided over by a Vice-Chair; and

- ensuring claimants are advised of the various community advocacy services that exist to provide support.

RECOMMENDATION (33):

- A Resource and Training Section should be established in the Tribunal under a Director.

- The resources and training provided by this Section should include :

    - providing access to all the decisions, information and research needed to mediate and decide equality rights disputes, not only to the Tribunal staff and adjudicators, but to everyone in the community who requires the information, such as claimants and respondents, lawyers and advocates, Equality Rights Centres, Human Rights Ontario, equality seeking groups, unions and other community groups;

    - providing initial and ongoing training and education for the Chair, Associate Chairs, Mediator, Registrar, Tribunal Counsel Office, Mediators, Intake Officers and Tribunal Officers;

    - publishing regular reports of Tribunal decisions and bulletins with easily understood summaries of the decisions;

    - keeping on public file copies of all claims filed with the Tribunal as a public record of discrimination issues being raised at the Tribunal, and copies of

settlements which are authorized to be made public by the Mediator. If necessary, the Protection of Privacy Act should be amended to allow the complaints and responses filed with the Tribunal to be made public, subject to the claimant's consent;

- **maintaining statistics and other information concerning the number, nature and results of claims filed;**
- **providing information on equality rights cases; providing initial and ongoing training for the Vice-Chairs, Mediators, Intake Officers and Tribunal Officers; and**
- **training and certifying arbitrators under the *Labour Relations Act*.**

RECOMMENDATION (34):

- **A Tribunal Counsel Office should be established to provide legal advice to the Tribunal and to provide particular legal assistance to any non-legally trained Vice-Chairs.**
- **Section 38(2) of the *Code* which restricts the ability of the adjudicator to talk to counsel and seek legal advice should be deleted.**

RECOMMENDATION (35):

- ***The Tribunal should take all reasonable measures to make itself accessible throughout the regions of Ontario, such as having cases heard around the province and choosing adjudicators, mediators and officers, some of whom live in the regions.***
- ***The Tribunal should make use, where appropriate, of modern technology including computers, video-conferencing and teleconferencing in order to maximize accessibility and minimize cost.***

RECOMMENDATION (36):

- ***Staffing of the Tribunal should take into account employment equity considerations including all groups covered by the Code and not just those in the Employment Equity***

Act.

- *Current Commission staff should be provided with training, where appropriate, to allow them to qualify for positions in the Tribunal.*

- *The new Tribunal should be covered by the Ontario Public Service Employees Union public service collective agreement.*

RECOMMENDATION (37):

- *Tribunal procedures should be developed to make hearings understandable and less formal in order to meet the needs of the persons who will come before the Tribunal, some of whom may be unrepresented.*

- *The Tribunal must have the power to make rules and procedures required to fairly, expeditously, and effectively decide human rights cases.*

RECOMMENDATION (38):

- *The Tribunal should be required to base its decision upon the real merits and justice of the case. It will not be bound to follow strict legal precedent but shall give a full opportunity for a hearing.*[1]

- *The Tribunal Officer or other authorized person should have the power:*

  - *enter any place at any reasonable time and post any notice at such place;*

  - *request the production for inspection of documents or things that may be relevant to the carrying out of the duties;*

  - *upon giving a receipt therefore, remove from a place documents or things produced so long as they are promptly returned; and*

  - *question a person on matters that are or may be relevant to the carrying out of the duties subject to the person's right to have counsel or some other representative present during the examination and.*

- *Failure to comply with this requirement should have consequences. Officers would assist parties to ensure disclosure happens in timely fashion.*

- ***The Tribunal adjudicator shall have the power to order a Tribunal Officer to conduct any necessary investigation in order to ensure that the case is heard on its real merits or in order to delegate to the Officer the hearing of any evidence. A warrant should not be required.***

- ***The Tribunal Officer would then provide a report on the investigation results to the adjudicator with copies to the parties.***

- ***The Tribunal adjudicator should have the power to compel evidence through a summons to appear or bring documents.***

RECOMMENDATION (39):

- ***The Tribunal shall have the power to hold an emergency or expedited hearing on short notice, where necessary, to ensure the proper protection of a claimant's human rights.***

RECOMMENDATION (40):

- ***The Tribunal should be able to assign one or more adjudicators to the hearing of a case depending on their skills and background.***

- ***The Code should be amended to provide that the Chair not the Minister could decide to assign one or more Vice-Chairs to sit on a case depending on the type of case and its importance.***

RECOMMENDATION (41):

- ***Parties to a claim will have an initial hearing before the adjudicator assigned to their case within 45 days from the date of the filing of the claim in order to decide all the preliminary matters which are necessary to prepare for the full hearing of the case. Such matters would include requests for a preliminary dismissal for lack of merit: for further disclosure or investigation; or for an interim order.***

RECOMMENDATION (42):

- **The *Code* must be rewritten in a way that introduces effective time limits for the hearings process and gives to those, in whose favour they run, the means to enforce them.**

- **Claims should receive an initial hearing within 45 days after the claim is filed and the decision should be released within 30 days after the end of the hearing.**

- **The Adjudicator should have the power, where appropriate, to direct the hearing process so as to conclude a hearing in a fair and expeditious fashion.**

- **The Associate Chair shall have the power to order an adjudicator to comply with the time limits for making a decision, but may extend those time limits if appropriate.**

RECOMMENDATION (43):

The *Code* should provide that the necessary parties to a claim are:

- **the claimant or the person or organization representing them;**
- **any person the claimant alleges has infringed a right under the *Code*;**
- **any person who appears to the Tribunal to have potentially infringed the right;**
- **any person, who in the Tribunal's opinion, had the authority or legal obligation to penalize or prevent the conduct complained of; and**
- **where the collective agreement is at issue, the trade union ...**
- **any other person directly necessary for the proper adjudication of the claim, including any person who should be bound by the outcome of the adjudication.**

- **A party may be added by the Tribunal at any stage of the proceeding upon such terms as the Tribunal considers proper.**

RECOMMENDATION (44):

- ***Human Rights Ontario should have the right to intervene with full participation rights*** *would unduly hinder or delay the fair hearing of the case.*

- *Appropriate intervenors or friends of the Tribunal, such as equality seeking groups, should be granted intervenor status in the process if they have a sufficient interest in the claim; are able to provide helpful assistance to the Tribunal in reaching its decision, and their presence would not unduly lengthen the hearing.*

RECOMMENDATION (45):

- *The Tribunal should have the exclusive jurisdiction to exercise its power to determine all questions of fact or law that arise in any matter before it.*[2]

RECOMMENDATION (46):

- *The Tribunal should be able to accept any evidence which it believes is reliable and relevant whether it is allowed as evidence in a court or not.*

RECOMMENDATION (47):

- *The Tribunal shall have the power to make any interim order where appropriate.*

RECOMMENDATION (48):

- *The Code should ensure that, where a business is sold, the Tribunal have the discretion to add successor businesses as necessary parties and to make any necessary order against them.*

RECOMMENDATION (49):

- **The Tribunal should be able to order Respondents to communicate information which is necessary to bring to the attention of such persons in connection with a case. Such communication should be done by posting a copy of the document in prominent places in each workplace or otherwise communicating it in a manner**

which may be understood by all of the employees in the workplace.[3]

RECOMMENDATION (50):

- **The Tribunal should be given explicit power to bring together a variety of claims to be heard jointly if that is considered strategic, fair and necessary to avoid undue duplication of evidence.**
- **The Tribunal should also have the power to amend claims so that the case is heard on its merits.**

RECOMMENDATION (51):

- **The Tribunal should have the power to seek legal advice, consult its own experts as appropriate without restrictions contained in s.38(2).**

RECOMMENDATION (52):

- **In light of informality of the process, and the elimination of a full appeal right, there should be no requirement to record evidence.[4]**

RECOMMENDATION (53):

- **When dealing with a case or otherwise, the Tribunal should be able to refer an issue to the Commission to study and report on.**

XVIII. REMEDIES AND MONITORING

RECOMMENDATION (54):

- **The *Code* should be amended to clarify that a Tribunal has a broad and powerful remedial power to strike at the heart of the problem to overcome discrimination. This includes the power to fully compensate an individual claimant as well as to order specific proactive measures to overcome discrimination faced by groups.**

RECOMMENDATION (55):

- **Compensation for mental anguish should be provided to victims of discrimination. The restriction that allows such compensation to be paid only in cases where the infringement has been engaged in wilfully or recklessly should be removed.**
- **The $10,000 limit for an award for mental anguish should be removed, allowing the amount of the award to depend on the facts of the case.**

RECOMMENDATION (56):

The *Code* should

- **require the Tribunal to determine whether the respondent took positive measures to implement the right to equal treatment and whether, in particular, the claimant received the positive right to equal treatment;**
- **state that remedies under the *Code*, in addition to individual redress, should include positive measures to achieve equality rights;**
- **specify that among the remedies that may be ordered are accommodation equity and service equity plans, audit plans, and employment equity plans for those groups not covered by the *Employment Equity Act*;**
- **state that an independent monitoring mechanism should be built into any remedy requiring monitoring to ensure that it is properly and effectively carried out; and**
- **allow the Tribunal to order a respondent to pay for the costs associated with carrying out the remedial order and any necessary costs of the Tribunal in monitoring the order.**

RECOMMENDATION (57):

- **The *Code* should be amended to clarify that the Tribunal has the power to act quickly and effectively to order a party to stop discriminatory practices or actions.**

XIX. RECONSIDERATION AND ENFORCEMENT OF TRIBUNAL DECISIONS

RECOMMENDATION (58):

- **The Tribunal should have the power to reconsider any decision and to vary, revoke, or substitute a new decision.**

- **Apart from the power to reconsider, the Tribunal's decision should be final and protected from review by the courts except where the decision is patently unreasonable.**

RECOMMENDATION (59):

- **The Tribunal should take a proactive approach to enforcement by ensuring that the Tribunal Officer assists both the claimant and the respondent in the enforcement of an order.**

- **The *Code* should provide that orders of the Tribunal, when filed with the Ontario Court of Justice (General Division), have the same force and effect as an order of that Court and therefore can result in fines and/or a jail term for non-compliance.**

RECOMMENDATION (60):

- **The *Code* should be amended to increase the fines for obstruction of the Tribunal process or failure to comply with a Tribunal order to a level that is consistent with environmental protection legislation, that is, a minimum fine of $2,000 and a maximum fine of $200,000.**

- **The money collected by the Treasurer of Ontario from the fines imposed under this section should be paid into an Enforcement Fund that could be called upon when extra funds are needed for the new human rights enforcement system.**

RECOMMENDATION (61):

- **The Tribunal should not have the power to order any party to pay legal costs to another party.**

XX. TRAINING THOSE WHO WORK IN THE NEW NEW SYSTEM

RECOMMENDATION (62):

- **The Resource and Training Section of the Equality Rights Tribunal should provide specialized human rights training for adjudicators and staff of the Tribunal.**

- **A coordinated approach, particularly with other equality agencies, should be used to provide training for persons appointed to, or hired by, the Equality Rights Tribunal.**

XXI. ROLE OF GOVERNMENT AND MAMOR PUBLIC BODIES

RECOMMENDATION (63):

- **The Government of Ontario and major public bodies should play a leadership role in advancing equality rights in the province.**

- **The Government of Ontario and major public bodies should require positive action to be taken in all areas under its control in order to overcome present patterns of systemic discrimination and ensure that members of discriminated against groups benefit equally and fairly from government job opportunities and services at all levels.**

- **The Premier mandate the Cabinet Office in consultation with the community to establish a mechanism to develop a coordinated strategy to advance equality rights, to ensure the integration of that strategy throughout the Government's decision-making (including the development of policies, practices and laws, the provision of services and/or employment practices), and to monitor the Government's performance in advancing equality rights.**

- **On behalf of the Cabinet Office, the Minister would receive and monitor equality reports from every ministry and from the specialized equality agencies, such as the Anti-Racism Secretariat, the Office for Disability Issues, the Women's Directorate and the Office of Seniors Issues.**

- **The Government, through the Cabinet Office and the responsible Minister, should submit an annual Equality Rights Report to the Legislature. The Report together with the Commission's Annual Report should be widely distributed and be submitted to the United Nations as part of Ontario's reporting requirements under international human rights covenants.**

- **An all-party Legislative Committee on Equality Rights should be established to provide a forum and to monitor and advance equality rights in Ontario.**

- The Legislative Committee should invite members of the community, including equality seeking groups, to appear before it to give their assessment of the Equality Report and the Government's performance in equality rights, as well as their recommendations for improvements.

- Each year the Legislature should have a day of debate on equality rights, which could take place at the time the Equality Report was tabled in the legislature.

RECOMMENDATION (64):

- The work of the various equality agencies should be coordinated, both in enforcing rights and in education, research, community development, and proactive initiatives. A regular mechanism should be put in place for ongoing coordination and cooperation.

- The Chief Commissioners for Pay Equity, Employment Equity, and Human Rights should meet regularly and establish a mechanism for their respective staff to coordinate any overlapping law enforcement and education functions.

- The Cabinet Office should establish a coordination mechanism that would allow for regular meetings of all provincial government agencies that have the specific mandate to advance equality rights for particular groups protected by the *Code*, such as the Ontario Women's Directorate, the Office of Disability Issues, the Anti-Racism Secretariat, and the Office for Seniors' Issues.

RECOMMENDATION (65):

- Each government ministry and major public body should be required to adopt and implement a clearly stated equity plan for services provided or overseen by the ministry or agency.

- The Deputy and Agency Head should be accountable for ensuring that the employees in their organizations are informed on human rights issues.

- Deputy Ministers should receive training in the principles of effectively implementing equality and should be accountable for the resolution of the particular equality issues raised by their ministry's mandate in all the areas covered by the *Code*.

- Every ministry and major public body should provide equality rights training to

their staff to ensure that an equality perspective is integrated within all levels of decision-making in the ministry.

- **Operational responsibility for implementing these service equity audits and plans should be with the Deputy Minister or head of the major public body. Success in effectively carrying out these reviews and implementing strategies for change would be a specific, significant factor in performance appraisal of the Deputy Minister or top official.**

- **The Deputy or Agency Head and the responsible Minister should be required to meet with the Commission every six months to assess the effectiveness of the organization's initiatives and their plan for the next six months.**

- **Each ministry and agency should post a notice about the *Code*'s requirements, as well as an outline of their service equity plans, in a prominent location. The information should be available in a manner that can be understood by all employees. (See Section XXII for further details.)**

RECOMMENDATION (66):

- **The Government and all major public bodies should conduct an immediate review of all rights claims made against them, seek a positive resolution wherever possible, and ensure that persons responsible for deciding to defend such claims and their lawyers are properly trained and informed on the *Code*'s proactive obligations and committed to a positive, constructive approach.**

RECOMMENDATION (67):

- **Public bodies should take a constructive approach to human rights claims made against them by focusing on the real, underlying issue of whether they have made sufficient positive efforts to achieve equality rights and whether improvement could be made.**

- **The Government should review and monitor its instructions to inside and outside legal counsel on matters relating to human rights claims made against it to ensure these instructions are consistent with a positive proactive approach to compliance.**

- **A public body against whom a human rights claim has been filed should be required to make public how much money it is spending on the case. The body must report to Human Rights Ontario every six months the amount of money that it is spending on the defence of rights claims, any settlements that have been reached, and copies of any decisions on those claims. The Commission could then make this information public and include it in its annual report to the Legislative Committee.**

XXII. PROACTIVE ROLE FOR EMPLOYERS, ACCOMMODATION AND SERVICE PROVIDERS

RECOMMENDATION (68):

- **An enforcement regulation should be passed making clear that the "right to equal treatment" in the *Code* means that employers, unions, and service and accommodation providers are required to take positive measures to overcome discrimination. The extent to which reasonable positive measures have been taken to overcome discrimination will be considered as part of the evidence in any claim.**

RECOMMENDATION (69):

- **Employers should take proactive measures to overcome discrimination against groups who may not be included under employment equity legislation. This includes different ethnic groups and different creeds, and persons discriminated against because of their sexual orientation, their family or marital status, or their a record of offences.**

- **As a basic informational initiative, employers should post in a prominent spot in the**

workplace a clear, easy-to-understand notice provided by Human Rights Ontario with information along the following lines.

- **Under the Ontario *Code*, every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, or disability.**
- **The employer is bound by the *Code* and has a policy to take positive measures to overcome discrimination.**
- **It is a serious matter not to obey the *Code*.**
- **A person who believes discrimination is being practised can get assistance by contacting the appropriate person in the workplace (including a union representative, if appropriate), any person in the workplace responsible for human rights claims (giving information on how to contact that person), or the nearest Equality Rights Centre (giving information on how to contact that office).**

RECOMMENDATION (70):

- **The most senior official of an employer should be required to ensure that management at all levels is informed of its human rights responsibilities.**
- **Human Rights Ontario, through its Commissioner for Compliance Services and Commissioner for Education, would be responsible for providing educational kits on human rights requirements in the workplace. These kits would be provided at a fee that could be waived where appropriate.**

RECOMMENDATION (71):

- **Workplace Human Rights Committees are an effective tool, but should not be made mandatory at this time. Instead, employers should coordinate their proactive, mandatory obligations under the *Employment Equity Act* with their responsibilities to the other groups covered by the *Code* and not covered by employment equity legislation.**

RECOMMENDATION (72):

- **Effective internal human rights systems developed in partnership with employees and involving active participation of employees may be a useful way to resolve human rights claims in the workplace.**
- **Employees should not be required to exhaust an internal workplace human rights system before they can file a claim under the *Code*. An employee's use of such an internal process should not bar their filing a claim with the Tribunal.**

RECOMMENDATION (73):

- **The housing and rental industry should take broad, practical, proactive measures to overcome patterns of discrimination in access to accommodation.**
- **Landlords should be required to be informed about their human rights responsibilities relating to providing accommodation. There would be consultation with all concerned on how best to implement this. Human Rights Ontario would assist in providing information kits for which a fee would be charged. This fee would be waived when appropriate.**
- **If the housing and rental industry does not take effective measures, Human Rights Ontario, in partnership with the affected groups, should consider adopting strategic measure, such as regulations, in order to overcome discrimination in access to accommodation.**
- **A notice about the *Code* provided by Human Rights Ontario, similar to that recommended for employers, should be posted in a prominent place and available in a form understandable to tenants. This notice could be posted in the elevator along with the elevator permit sign. For a landlord with two units and no common area, the notice should be directly given to the tenant.**

RECOMMENDATIONS (74):

- **Service providers should be required to be informed on human rights responsibilities relating to the provision of their service. There would be consultation with all concerned on how best to implement this. Human Rights Ontario would assist in providing information kits for which a fee would be charged. This fee would be waived where appropriate.**

- Major publicly funded agencies providing services to the public should implement service equity plans that include broad, practical, proactive measures to overcome patterns of discrimination in service provision.

- If such agencies providing services to the public do not take such measures, Human Rights Ontario, in partnership with the affected groups, should consider developing regulations to require service providers to take specific proactive measures.

- As a basic informational initiative, information about the *Code* provided by Human Rights Ontario similar to that recommended for employers should be made available to the consumers of a service provider in a form understandable to them. The details of how this recommendation would be implemented for the various kinds and sizes of service providers should be discussed with the involved communities.

XXIII. EDUCATION AS A PROACTIVE STRATEGIC MEASURE

RECOMMENDATION (75):

- Strategic proactive education is a key human rights enforcement strategy to ensure, advance and maintain a culture of equality.

- Human Rights Ontario has a unique and important role to play in the area of education to oversee and initiate education activities which will advance its overall strategic plan for the enforcement of Ontarians' human rights.

- To be effective, education must be innovative, reach all Ontarians and enter into strategic partnerships in doing so.

- Human Rights Ontario should focus on educational initiatives which are most likely to concretely contribute to the reduction of systemic discrimination in the strategic areas it has identified.

RECOMMENDATION (76):

- Under the Human Rights Ontario budget, priority must be given to providing education aimed at making human rights enforcement accessible and effective.

- The education work of the various equality agencies inside government, such as the Anti-Racism Secretariat, the Ontario Women's Directorate and the Office for Disability Issues, should be coordinated with the work of the Human Rights Commission through a clearly identified, regular process of liaison.

RECOMMENDATION (77):

- **Effective human rights material should be developed and included in the regular school curriculum at every level from the earliest years.**

- **The Ontario Ministry of Education should review the human rights curriculum material that already exists, improve and supplement it as needed and require it to be taught throughout the Ontario school system.**

RECOMMENDATION (78):

- **The Government should require Faculties of Education to take positive measures to open up training opportunities to disadvantaged groups.**

- **Under the contract compliance provisions of the *Code*, the Government should examine the employment equity and service equity progress of universities and colleges as a factor in judging the quality of their operations and the funds they should receive.**

RECOMMENDATION (79):

- **Teacher training courses should include training in human rights as a requirement for certification as a teacher.**

RECOMMENDATION (80):

- **School Boards, colleges and universities should be required to implement a clear, effective plan to overcome discriminatory employment practices so that teachers and administrators at all levels reflect the full community.**

RECOMMENDATION (81):

- **The Ministry of Education should require School Boards, in partnership with the community, to develop and implement service equity plans to ensure that all students**

receive equitable educational services.

XXIV. CONCLUSION: MOVING FORWARD

RECOMMENDATION (82):

- **The Government should name a senior person in the Cabinet Office to be overall responsible for coordinating and directing the implementation of the reform process and ensuring that it proceeds quickly and with the cooperation of all the relevant Ministries and other bodies.**
- **The Government should play a role in bringing together a group of representatives from the business community who are leaders in the field of implementing equality in employment, accommodation and services. These representatives could meet together and with the Government in order to participate effectively in the reform process.**

RECOMMENDATION (83):

- **The government should fund a Human Rights Follow-Up Project to allow equality seeking groups to work together and play a meaningful role in the implementation of human rights reform.**
- **The Project should allow for a meeting of equality seeking groups from across the province in September, 1992 and every six months thereafter to review progress to date.**

RECOMMENDATION (84):

- **Employers and service and accommodation providers should begin discussions within their sector and with government on how to participate in a new, revitalized human rights system. These persons should meet with the Government and other to effectively participate in the reform process.**

RECOMMENDATION (85):

- **The Ontario Human Rights Commission should study and consider this report in** order to promptly implement where appropriate the recommendations for reform which do not require legislative amendments.

- The Commission should also work with the Human Rights Follow Up Project and the representatives of the respondent community to discuss implementation issues as they affect the Commission.
- The Commission should adopt a more open, cooperative relationship with community groups and individuals with human rights expertise and allow them to prepare and develop their own claims, and participate in direction of the investigation, settlement and appointment of the Board of Inquiry.
- The Commission should interpret section 36 of the Code broadly. It should consider that a hearing is the normal "appropriate procedure" for the resolution of a human rights claim and the requirement for there to be "evidence" which "warrants an inquiry" should be whether the claim discloses reasonable grounds of a violation of the Code which should be responded to in a public hearing.
- The Commission should also work with the Commission employees' bargaining agent OPSEU in order to plan for the labour relations concerns which arise from the Report and this Plan.

RECOMMENDATION (86):

- The Government should name a senior person in the Cabinet Office to be overall responsible for coordinating and directing the implementation of the reform process and ensuring that it proceeds quickly and with the cooperation of all the relevant Ministries, equality agencies and other bodies. This coordinator will work closely with all interested groups,including those identified in this Plan. This coordinator would work closely with the Deputy Minister of Citizenship.

RECOMMENDATION (87):

- The Task Force calls on the Ontario Liberal Party and the Progressive Conservative Party of Ontario to take all necessary steps with the governing New Democratic Party to ensure the speedy passage of the necessary legislation.

RECOMMENDATION (88):

In the view of the Task Force, the following actions could and should be taken by:

August 1, 1992

- **The follow up project should be funded to allow equality seeking groups to participate in the reform process.**

September 1, 1992.

- **The Premier on behalf of the Government should make a firm commitment to the expeditious implementation of this report in partnership with the two opposition parties.**

- **The government should start discussions with the Pay Equity Tribunal and the Employment Equity Commissioner to set up a joint Tribunal.**

- **The lead Minister and person designated in the Cabinet Office to oversee the reform should act on the recommendations set out in the report which apply to Government itself (Section of Proactive Role for the Government) and direct all government ministries and agencies to review the pending human rights cases against them. Direction should be given to take a proactive equality rights approach in any future action on pending cases.**

September 30, 1992

- **The Premier of Ontario should consult widely with appropriate people and name the three persons with outstanding human rights records as the Equality Rights Appointment Committee.**

By November 30, 1992,

- **The Government should establish the Equality Services Board which could be working on establishing the standards and training for the law advocates and other matters. These advocates could be retained to act under the old system.**

In the Fall Session, 1992

- **The Government should bring in the necessary legislation which is needed to implement the report.**

No later than the Spring Session, 1993

- **The Government should work with the Leaders of the Opposition to ensure that the bill is passed.**

By September 30, 1993

- **The new enforcement system should be reasonably operational.**

APPENDICES

Appendix 1

TASK FORCE ON THE PROCEDURAL REVIEW OF THE HUMAN RIGHTS CODE, 1981

The Government of Ontario, having identified the need for an independent review of the procedures for the enforcement of human rights in Ontario, requires a Task Force to:

- review the current procedures for the enforcement of human rights set out in the *Human Rights Code, 1981*; and
- make recommendations for a fair and practical system for the enforcement of human rights in Ontario.

The Task Force is to seek information from a variety of sources including relevant ministries, agencies and tribunals of the Government of Ontario, the Ontario Human Rights Commission, equity-seeking groups, the academic, business, labour and legal communities, the public and other jurisdictions. Information will be obtained through research, receipt of written submissions and public meetings.

The Task Force will be assisted by an advisory group with diverse representation, which will provide information and advice to the Task Force.

The Task Force will submit a report of its finding, analyses and recommendations for amendments to the *Human Rights Code, 1981* to the Minister of Citizenship by June 30, 1992. The report will be released to the public.

Review Components

The Task Force will review the process for the enforcement of human rights set out in Part IV of the *Human Rights Code, 1981* and consider alternative enforcement processes for the purpose of recommending a fair and practice system for the enforcement of human rights in Ontario.

For that purpose, the Task Force will:

1. Examine the features of the current procedures which may limit fair and timely results, including the requirements:

    - that the Ontario Human Rights Commission have carriage of all complaints;
    - that all complaints be investigated by the Commission;
    - that settlement be attempted in all cases;
    - that all adjudicative decisions (such as dismissal and early dismissal of a complaint and approval of settlement) be made by the Commissioners;
    - that the Commissioners be satisfied as to the sufficiency of the evidence in each case before requiring a Board of Inquiry;
    - that only the Commission may request the appointment of a Board of Inquiry.

2. Examine the role of the ontario Human Rights Commission in the enforcement process, in the context of its legislated functions, to determine whether the role of the Commission should be changed.

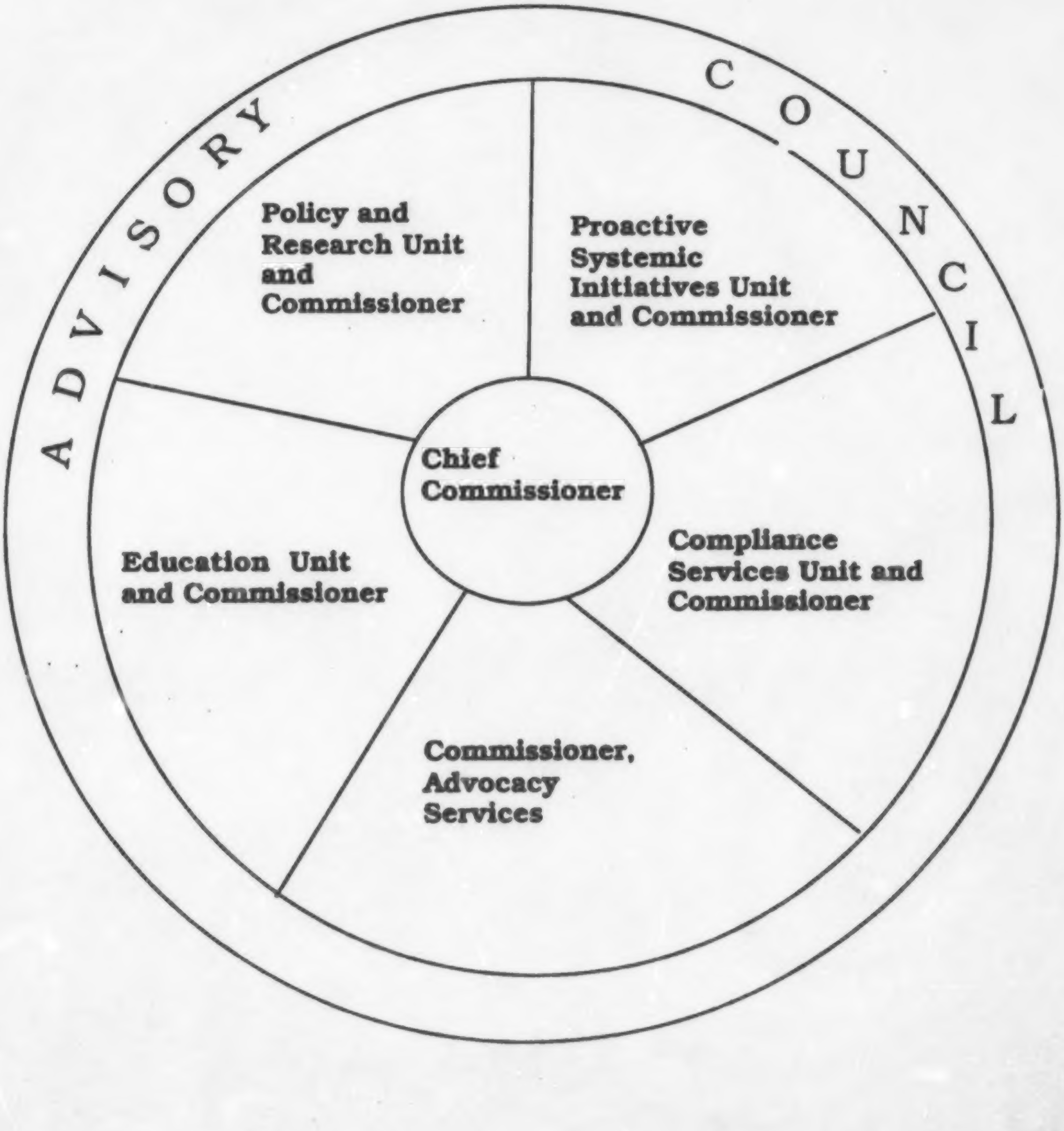
3. Examine the division of adjudicative decision-making responsibility between the Ontario Human Rights Commission and Boards of Inquiry, to determine whether the roles and division of responsibility should be changed.

4. Consider the use of alternative dispute resolution mechanisms, including the potential use of other tribunals, in resolving human rights complaints.

5. Make recommendations for legislative changes to give effect to the recommendations and conclusions of the Task Force.

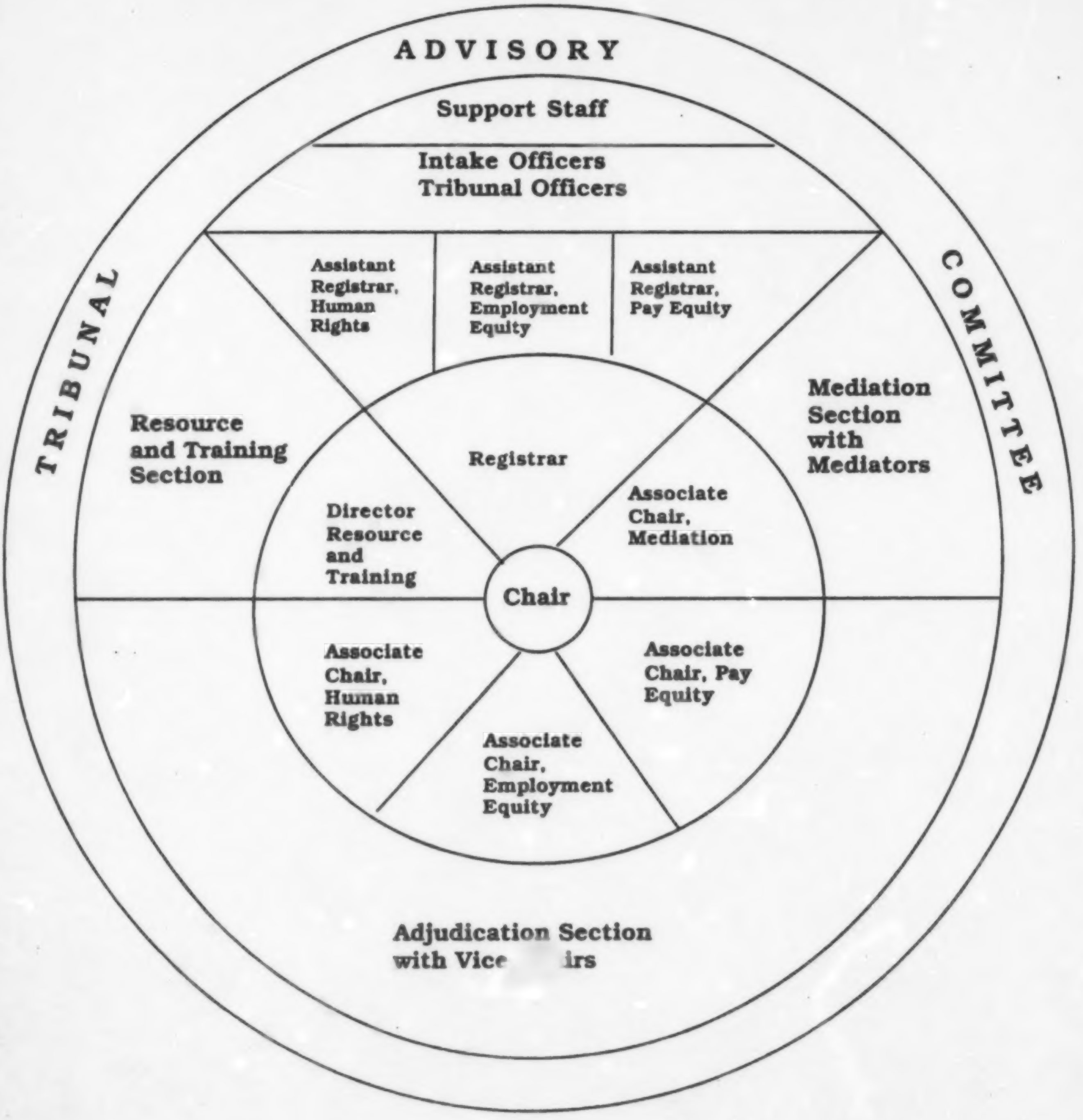
Appendix 2

HUMAN RIGHTS ONTARIO


ADVISORY COUNCIL
Policy and Research Unit and Commissioner
Proactive Systemic Initiatives Unit and Commissioner
Chief Commissioner
Education Unit and Commissioner
Compliance Services Unit and Commissioner
Commissioner, Advocacy Services

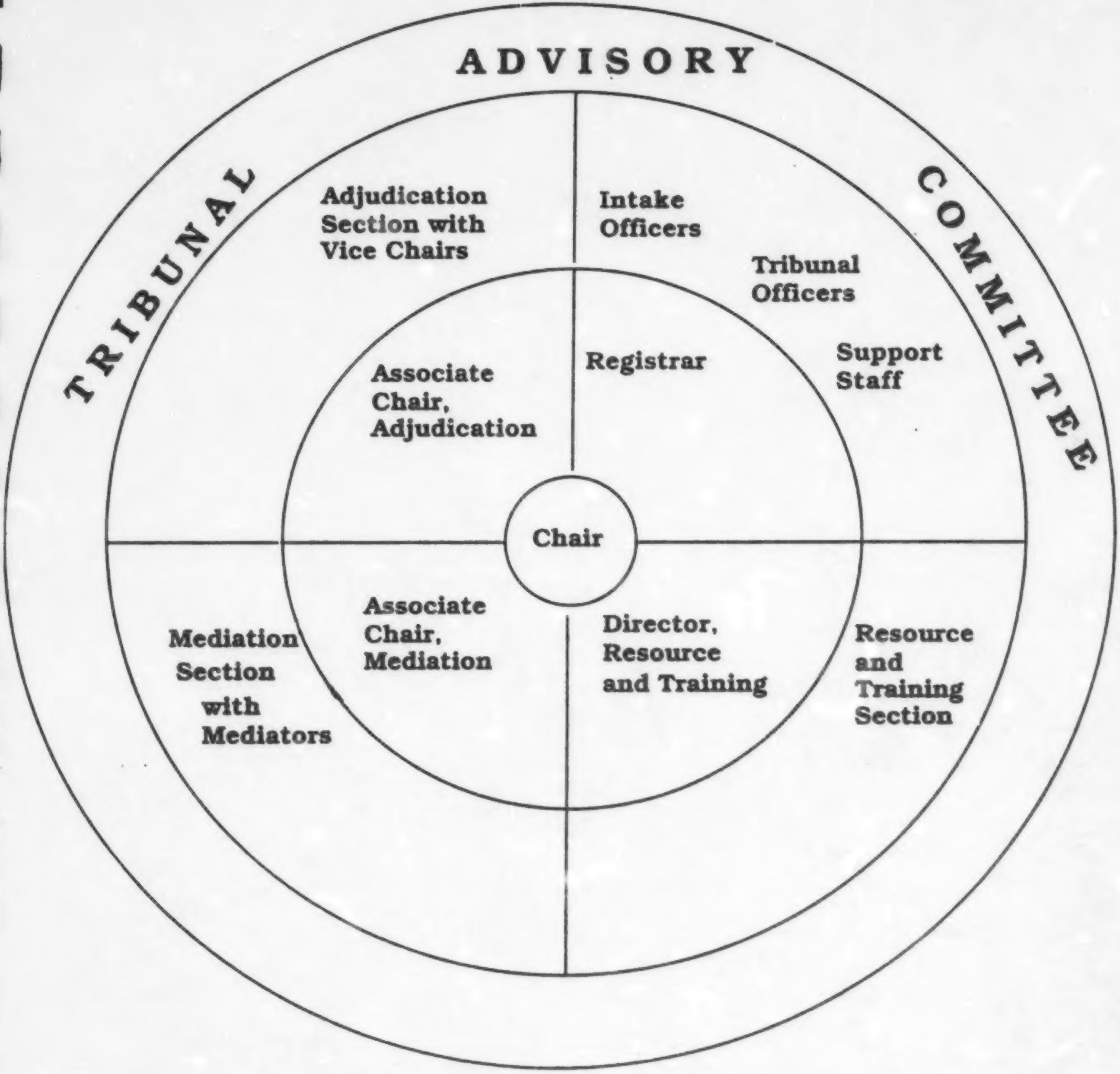
Appendix 3-1

EQUALITY RIGHTS TRIBUNAL


ADVISORY
TRIBUNAL
COMMITTEE
Support Staff
Intake Officers
Tribunal Officers
Assistant Registrar, Human Rights
Assistant Registrar, Employment Equity
Assistant Registrar, Pay Equity
Resource and Training Section
Registrar
Mediation Section with Mediators
Director Resource and Training
Associate Chair, Mediation
Chair
Associate Chair, Human Rights
Associate Chair, Pay Equity
Associate Chair, Employment Equity
Adjudication Section with Vice [illegible]irs

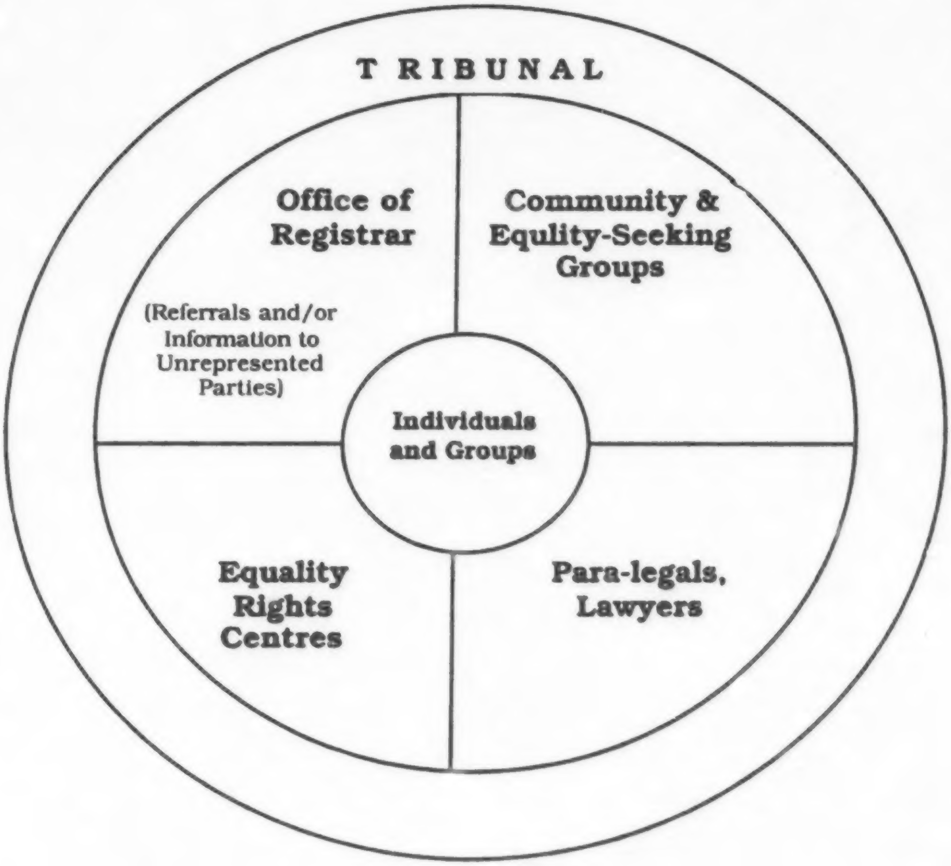
Appendix 3-2

HUMAN RIGHTS TRIBUNAL


ADVISORY
TRIBUNAL
COMMITEE
Adjudication Section with Vice Chairs
Intake Officers
Tribunal Officers
Support Staff
Associate Chair, Adjudication
Registrar
Chair
Mediation Section with Mediators
Associate Chair, Mediation
Director, Resource and Training
Resource and Training Section

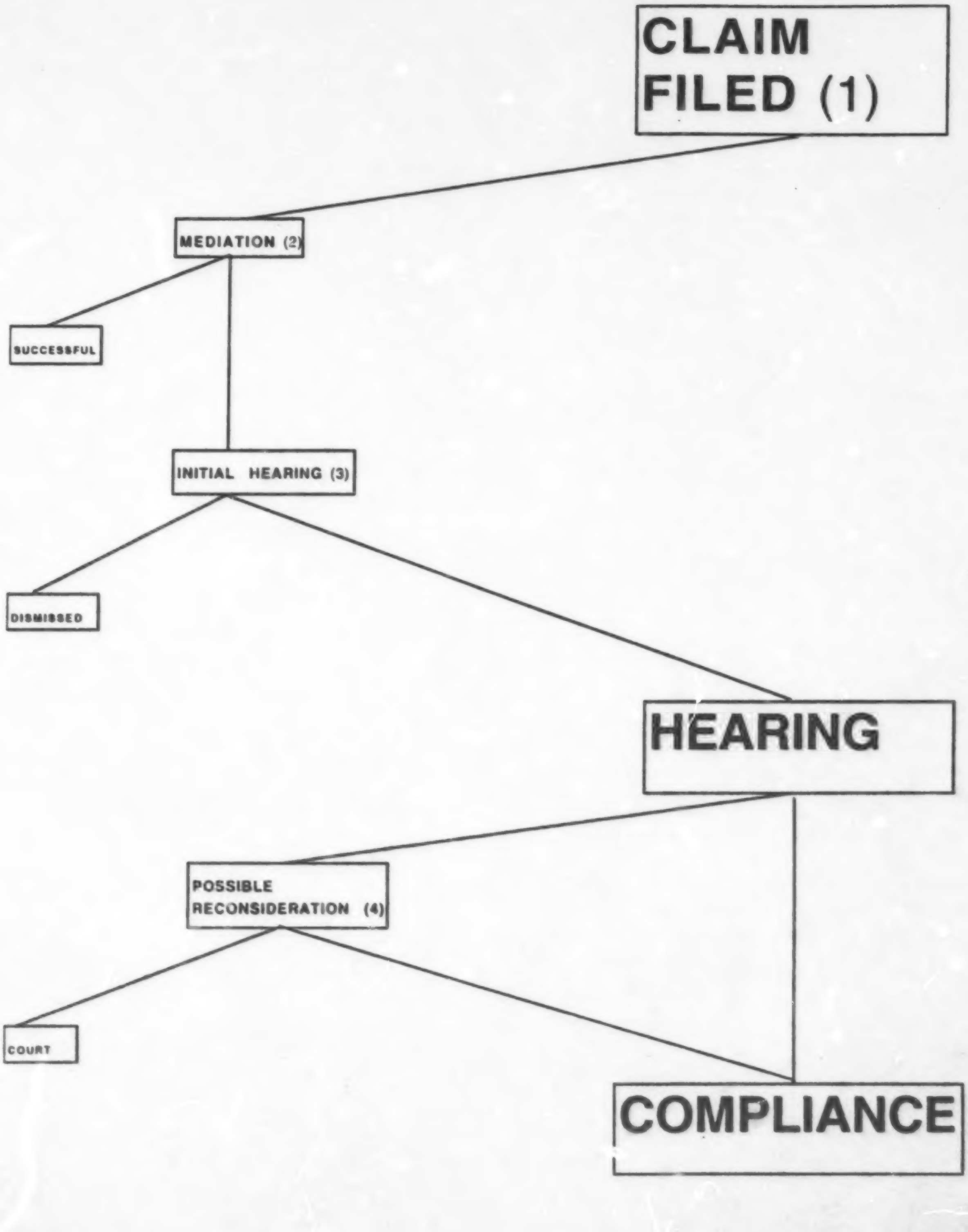
Appendix 3-3

GETTING TO THE TRIBUNAL



Appendix 3-4

FLOWCHART OF TRIBUNAL PROCESS



NOTES TO FLOWCHART OF TRIBUNAL PROCESS

1. Claims are filed in the Office of the Registrar. Normally, the first step is that the Registrar assigns a Tribunal Officer to the claim. The Tribunal Officer would contact the parties to explain the Tribunal process and ensure that this process was understood. The Tribunal Officer would make the parties aware of the two options open to them: mediation and adjudication. Parties would be asked if they had considered settlement options and whether they are interested in using the services of the Mediation Section. With the event the parties proceed to adjudication, the Tribunal Officer assigned to the claim would proceed to ensure that it was ready for hearing. This may involve ensuring that disclosure requirements have been complied with, advising the Registrar to schedule an initial hearing, or supervising developing an agreed statement of facts where possible.

2. Where the parties were agreed to attempt mediation, the Tribunal Officer would refer them to an assigned Mediator in the Mediation Section. Mediation may be successful or unsuccessful. Where it is successful, the only issue which arises is compliance with the terms of the mediated settlement. Alternatively, a Mediator or one of the parties may conclude that the attempt at mediation should be terminated. If so, the claim is referred back to the original Tribunal Officer.

3. A Vice-Chair would preside at the Initial Hearing and could do the following:

   - uphold or overturn the Associate Chair's decision to dismiss the claim because it was outside the jurisdiction of the Code,
   - make interim orders,
   - order further disclosure,
   - order a Tribunal Officer to investigate the claim, or actually
   - render a final decision where appropriate.

   The Vice-Chair would be able to use the initial hearing to ensure that the evidence necessary to adjudicate would be available by the time of the full hearing. Vice-Chairs would, moreover, control Tribunal resources by determining when Tribunal Officers investigate and the depth of the investigations.

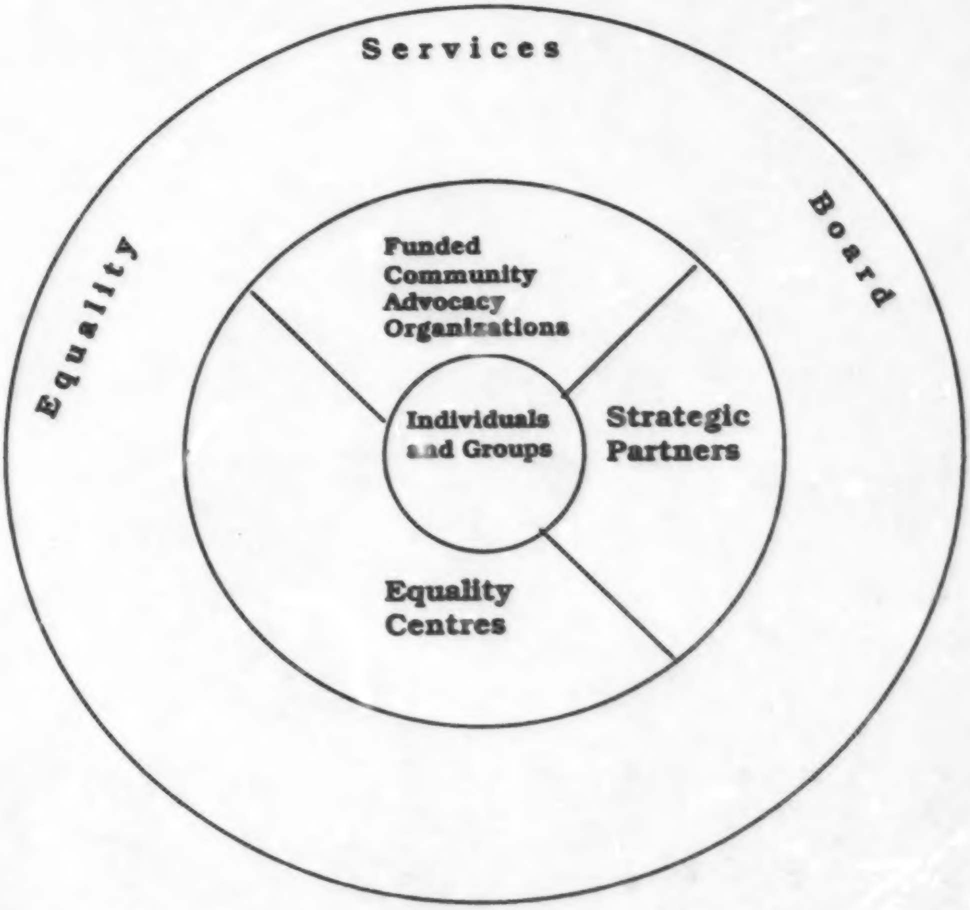
4. Reconsideration of a decision may occur in two ways:

   - a party in disagreement with the Vice-Chair's decision may request reconsideration and the Tribunal agrees to the request, or
   - the tribunal could seize the initiative to reconsider one or several conflicting decisions.

   Given that its decisions are final, it must be emphasized that the Tribunal would exercise this option infrequently. Moreover, it would decide what form reconsideration would take (i.e. new hearing or written submissions).

Appendix 4-1

REGIONAL EQUALITY SERVICES



Appendix 5

ACHIEVING EQUALITY - GLOSSARY

Adjudicator

An individual or panel which hears both sides of a case, and makes a decision based on the evidence that has been presented.

Adversarial

This describes an approach that is confrontational and legalistic, such as the approach used in the court system, where two parties oppose one another in a very formal setting with rigid rules. Many people feel this is not an appropriate approach for equality cases, which need a more open, inquiring approach.

Civil action

This refers to a legal proceeding in the civil court system. For example, a small claims action is a civil action. The laws governing civil actions are provincial.

Claimant

A person or group who feel their equality rights have not been respected and file a human rights claim under the Code are called a claimant.

Constitution

The Constitution, which includes the Charter of Rights, is the supreme law of Canada. It governs the actions of all levels of government. All provincial legislation, including the *Human Rights Code*, must follow the Constitution.

Criminal action

As opposed to a "civil" action, a criminal action involves prosecuting someone in criminal court, for a crime they are alleged to have committed. Criminal proceedings are governed by the *Criminal Code*, which is federal legislation.

Discovery

Many of those consulted spoke of the need for a pre-hearing opportunity to identify and exchange relevant documents. In the court system, this process of disclosure is referred to as "discovery".

Empowerment

This refers to people gaining more control over their lives; for example, claimants having a stronger and more active role in the way their claim is handled.

Interim Order

This is when an order is made before the final outcome of the claim. An example of an interim order in a human rights claim is a respondent employer ordered not to fill an advertised job vacancy until a claim of discrimination in the hiring process has been resolved.

Mediation

In contrast to an adversarial approach, mediation involves resolving claims in a non-confrontational environment. In order to succeed, mediation requires trained "mediators" to assist the parties resolve their dispute.

Precedent

A previous decision of a court or tribunal is referred to as a precedent. It is very helpful for those thinking of getting involved in cases similar to ones where rulings have been handed down to have access to "precedents" on their issue.

Proactive

A proactive approach to human rights enforcement means taking active steps to prevent or overcome discrimination, rather than waiting and reacting after claims are filed.

Procedure

A procedure means the way or process by which something is done. For example, court procedures mean the rules about the way the hearing will be conducted.

Respondent

The person or body against whom a claim could be made, who is responsible under the Code for ensuring equality. They must "respond" to the claim that they did not respect the claimant's equality rights.

Reconsideration

This refers to when decision makers reconsider a decision they made earlier. They take another look at the decision and decide whether it should be changed.

Regulations

Regulations assist people to interpret and define a piece of legislation, such as the *Code*. For example, a *Code* regulation might help to specify exactly what is required to make services accessible to people with disabilities. Presently, there are no regulations under the *Code*, and the Commission has no power to create them.

Retaliation

This is a reference to a respondent, or anyone else, taking action against a claimant, or someone assisting a claimant, because of their involvement in the human rights enforcement process. The *Code* prohibits such acts of "reprisal."

Systemic discrimination

Systemic discrimination refers to widespread, often deep-rooted patterns of discrimination affecting many members of a disadvantaged group. Systemic discrimination can be overt and intentional, such as widespread discrimination and harassment in rental of housing against persons of colour; or it can be unintentional, such as having steps in buildings, which result in a denial of access to jobs, services and housing for persons using a wheelchair.

Third Party Claim

The ability for an individual or group, who is neither claimant nor respondent, to initiate a claim on behalf or instead of a claimant.

Appendix 6

WHO WE CONSULTED

Organizations

Access Action Council
ACCESS - Aids Committee of Sudbury
Advocacy Resource Centre for the Handicapped
Advocates for Community-Based Training & Education for Women
African Community Organization
African Resource Centre
Aids Committee of Guelph & Wellington County
Aids Committee of London
Aids Committee of Toronto
Aids Action Now
Algoma University College
Alliance for Employment Equity
Alliance for South Asian Aids Prevention
A.P.A.N.O.
A.P.H.
Arab Palestine Organization
Association of Gays & Lesbians of Ottawa
Association of Iroquois and Allied Indians
Association of Municipalities of Ontario
Atikokan Injured Workers' Support Group
B'Nai Brith League For Human Rights
Beendigen Inc.
Black Action Defence Committee
Black Business & Professional Association
Black Community for Youth
Black Inmates and Friends Assembly
Blind of Ontario Organized with Self Help Tactics
Board of Trade of Metro Toronto
Brantford Ethnic & Race Relations Committee
Buddhist Communities of Greater Toronto
Cambodian Association
Canadian Accountability Project
Canadian Alliance for Visible Minorities
Canadian Association of Elizabeth Fry Societies
Canadian Autoworkers - Local 444
Canadian Civil Liberties Association
Canadian Council for Racial Harmony
Canadian Ethnocultural Council
Canadian Hard of Hearing Association
Canadian Hearing Society
Canadian Hispanic Congress
Canadian Institute for International Order
Canadian Jewish Congress - Ontario region
Canadian Manufacturers' Association
Canadian Union of Public Employees
Canadian Union of Public Employees - Ontario Division
Canadians with Origins in Islamic Nations
Casey House
Catholic Immigration Centre
Centre for Equality Rights in Accomodation
Chiefs of Ontario
Children & Parents Guard Association
Chinese Canadian Association of Scarborough
Chinese Canadian National Council - Toronto Chapter
Chinese Information & Community Services
Chippewas of Nawash First Nation
Chippewas of Saugeen First Nation
City of Gloucester
City of Toronto - Management Services Department
City of Toronto - Management Services Department, Equal Opportunity
City of Toronto - Personnel Committee Division
CNT
Coalition of Immigrant & Visible Minority Women
Coalition for Lesbian & Gay Rights in Ontario
Coalition on Human Rights & Disability Issues
Committee for Racial Harmony in the Schools
Communities for Cultural Equality
Community for Black Youth
Concerned Citizens for Access and Equality
Confederation College
Conflict Management Group
Conflict Resolution Service - St. Stephen's Community House
Congress of Black Women of Canada - Toronto Chapter
Cornish Roland
Council of Canadian Administrative Tribunals
Council on Aging for Renfrew County
Court Challenges Program
COUSA
CRCS
Crisis Housing Liaison
Cross Cultural Communication Centre
Disabled Women's Network
Disabled Workers' Network 100%
District 12 Hospitals
Dow Chemical Canada Inc.
Downtown Care/Ring Home Support Services of Toronto
East London United Church Outreach
Epilepsy Association - Metro Toronto
Epilepsy Ontario
Epileptic (Advocacy) Liberation Front

Equality for Gays and Lesbians Everywhere
Essex County Board of Education
European Court of Human Rights
First Nations Students' Society
Flemingdon Community Legal Services
Forgotten Scouts
Freedom Party of Ontario
FWTAO
G.P.
G.S.S.
Gay Fathers of Toronto
General Motors of Canada Limited
Greyhound Bus Lines
Guyana Canadian Association
Hamilton Against Poverty
Hamilton Wentworth Head Injury Association Family Support Group
Handicapped Action Group - Thunder Bay Chapter
HEAR/HERE
Hindu Solidarity Group
Hispanic Private Congress
Holiday Inn
Homelink
Homophile Association of London
Human Resources Personnel Association
Independent First Nations Association, Sioux Lookout
Information Sudbury
Injured Workers' Support Group
Institute of Equality & Employment
Inter-Agency Coalition for the Disabled
Inter-Clinic Work Group on Human Rights
International Coalition for Assistance to Refugees
Jessie's Centre for Teenagers
John Howard Society of Metro Toronto
John Howard Society of Ontario
Kapuskasing Action Centre
Kush - South Asian Gay Men's Association
Latvian Seniors' Club
Learning Disabilities Association of London-Middlesex
Learning Disabilities Association of North Peel
Learning Disabilities Association of Ontario
Legal Assistance of Windsor
London Urban Alliance
Mathews, Dinsdale & Clark
McKellar Hospital
McQuesten Legal & Community Services
Metro Action Committee on Public Violence Against Women
Metro Toronto Chinese & Southeast Asian Legal Clinic
Metro Toronto Housing Authority
Minority Advocacy & Rights Council
Multicultural Association of Northwestern Ontario
Multicultural Council of Professional Women
Municipality of Metropolitan Toronto - Chief Administrative Officer's Department
Myalgic Encephalomyelitis Self Help Ottawa
N'Swakamok Native Friendship Centre/Better Beginnings Better Futures
NAACL
National Action Committee on Status of Women
National Association of Canadians of Origins in India - NACOI - Metro Toronto Chapter
National Association of Friendship Centres
National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW Canada)
National Capital Alliance on Race Relations
National Congress of Italian Canadians
National Council of Canadian Filipino Associations
National Educational Association of Disabled Students
National Grocers/Loblaws
National Organization of Immigrant & Visible Minority Women
Native Alliance Against Racism in the Workplace
Native Law Students' Association
NDAC
Network of Filipino Canadian Women
New Experiences for Refugee Women
Niagara North Community Legal Assistance/Housing Help Centre
Nishnawbe-Aski Nation
OCBTU
Office of the MPP for London Centre
Office of the MPP for London North
Ojibways of Walpole Island First nation
Older Women's Network
Ontario Advisory Council for Disability Issues
Ontario Advisory Council on Women's Issues
Ontario Association for Community Living
Ontario Coalition of Visible Minority Women
Ontario Council of Agencies Serving Immigrants
Ontario Council of Regents for Colleges of Arts and Technology
Ontario Council of Sikhs
Ontario Federation of Indian Friendship Centres
Ontario Federation of Labour
Ontario Friends of Schizophrenics - Thunder Bay Chapter
Ontario Head Injury Association
Ontario Hospital Association
Ontario Hydro: Employment Equity Department
Ontario Immigrant & Visible Minority Women's Organization
Ontario Metis and Aboriginal Association
Ontario Native Council on Justice
Ontario Native Women's Association
Ontario Psychiatric Survivors' Alliance
Ontario Public Service Advisory Group on Employment Equity for Persons with Disabilities
Ontario Public Health Association

Ontario Public Service Employees Union
Ontario Sports Centre
OPSA - Ottawa-Carleton
OPSEU - Human Rights Committee
OPSEU: "Human Rights in Ontario: Let's Get Real"
OPSEU - local 526
OPSEU - local 544
OPSEU - Region 4 - Human Resources Steering Committee
ORC Canada Inc.
ORCSSB
Organisation of South Asian Canadians
Ottawa Advocates for Psychiatrized People
Ottawa-Carleton Immigrant Services
Ottawa Women's Club
OXFAM
P.H.A.R.A.
Pakistan Canada Association
Pakistan Canadian Association of Toronto
Parkdale Community Legal Services
Participation House
Patients Rights Association
People First of Ontario
Persons United for Self Help - Central Region
Persons United for Self Help - Northeastern Region
Persons United for Self Help - Northwestern Region
Persons United for Self Help - Ontario
Persons United for Self Help - Southwestern Region
Physically Challenged Action Network
Political Action
Precedent Resource Group
Public Service Alliance of Canada
Race Relations Committee - National Association of Canadians of Origins in India
SMFAA
Society of Ontario Adjudicators and Regulators
South Asian Advisory Council
South Asian Centre of Windsor
South Etobicoke Community Legal Services
St. Marys and District Association for Community Living
Sudbury Memorial Hospital
Sudbury Multicultural/Folk Arts Association
Sudbury Race Relations Committee
Support Committee for Arthur Chen
Support Committee for John Persaud
Tamil Eelam Society of Canada
The T.O! Newspaper
Thomas & Associates
Thorncliffe Neighbourhood Office
Thunder Bay & District Injured Workers Support Group
Thunder Bay Employment Services
Thunder Bay Youth Employment
Total Employment Services
Toronto Hydro
Toronto Star
Transgender Rights in Ontario
Trent University
Union of Injured Workers
Union of Ontario Indians
University of Guelph Staff Association
University of Ottawa
University of Toronto, Department of Criminology
University of Windsor
University of Windsor First Nations
University Settlement Recreation Area
Urban Alliance on Race Relations
USH
Vedic Cultural Association (South Asian Advisory Council)
Vietnamese Assistance Association of London
Wei Fu Ad Hoc Committee
Wequedong Lodge of Thunder Bay
Windsor Board of Education
Windsor & District Labour Council
Windsor District Labour Council - Local 195
Windsor Essex Bilingual St. Clair College
Windsor-Essex County Equity Network
Windsor Star
WMI
Women's Action Against Racist Policing
YMCA

Government
Alberta Human Rights Commission
Cabinet Office
Canadian Human Rights Commission
Clinic Resource Office - Ontario Legal Aid Plan
Corporation of the City of Sault Ste. Marie
Employment Equity Commissioner
Environmental Assessment Board
Liquor Control Board of Ontario, Human Rights Division
Management Board of Cabinet
Management Board Secretariat
Manitoba Human Rights Commission
Ministry of the Attorney General
Ministry of Citizenship
Ministry of Colleges and Universities
Ministry of Community and Social Services
Ministry of Correctional Services

Ministry of Education
Ministry of Health, Women's Health Bureau
Ministry of Government Services
Ministry of Housing
Ministry of Labour
Newfoundland and Labrador Human Rights Commission
Office of the Board of Inquiry Panel
Office of the Clerk, Committees Branch
Office for Disability Issues
Ombudsman Ontario
Ontario Anti-Racism Secretariat
Ontario Human Rights Commission - Hamilton-Niagara Regional Staff
Ontario Human Rights Commission
Ontario Insurance Commission
Ontario Labour Relations Board
Ontario Municipal Board
Ontario Native Affairs Secretariat
Ontario Public Service Advisory Group on Employment Equity for Persons with Disabilities
Ontario Securities Commission
Ontario Women's Directorate
Pay Equity Commission
Pay Equity Hearings Tribunal
Premier's Office
Premier's Council on Health, Well-being and Social Justice
Prince Edward Island Human Rights Commission
Public Appointments Secretariat
Quebec Human Rights Commission
Rent Review Hearings Board
Saskatchewan Human Rights Commission
Social Assistance Review Board
Special Advisor to the Premier on Race Relations
Workers' Compensation Appeals Tribunal
Workers' Compensation Board
Workplace Health and Safety Agency

Individuals

Abassi, Hakim
Abdulkadin, Sadiq
Abshez, Murray
Acemah, Harold
Ag, Egya
Ali, Shaheen
Anand, Raj
Applebaum, Seymore
Bain, Beverley
Ballantyne, Bill
Bass, Leo
Batliwalla, Bapai
Beck, Jenny
Bernard, Joseph
Beveridge, Brad
Bhoopaul, Ormila
Bhoopaul, Jane
Bled, Yves
Bogacz, Linda
Borwein, David
Brathwaite, Cheryl
Bregman, Patti
Brodsky, Gwen
Broten-Laberge, Laurel
Buchan, Shannon
Bulger, Kim
Burr, Caterine
Buyers, Joan
Byers, John
Bynoe, Pam
Cadman, Lois
Campbell, Charles
Carley, Delia
Caskey, Jane
Charles, Leona
Chong, L.
Chulka, Arthur
Clark, Kyle
Cline, Steve
Codd, Paul
Conway, Sheelagh
Critton, Dorothy
D'Arcy, Sharon
Dandurand, Christine Mary
Day, Shelagh
De Peza, Joan
Deagle, Betty
Demartini, Cristina
Demartini, Guillermo
DeMers, Gary
Endicott, Orville
Feldthusen, Bruce
Foreman, Dave
Fortin, Elsa
Francis-Gagne, Caroline
Fraser, Sue
Fraser, Kathleen
Gahan, William
Georges, Mervyn
Gharmarajah, A.
Gill, Penny
Ginsburg, Marilyn

Glen, David
Goldstein, Dian
Grant, Yola
Guthro, Linda
Hanson, J.C.
Harrington, W.F.
Harrisson, Louise
Harwood, John
Hennessy, Pat
Henry, Lana
Herr, Stan
Holliday, Catherine
House of David - the 7th Angel
Hughes, Don
Hyndman, Brian
Jain, Harish
Jeeves, Alan
Jefferson, James
Joe, Barry
Jordan, Kathleen
Karwacki, Peter
Kerr, Michael
Khodadeen, Abid
Kneller, Terry
Kroeker, John
Lang, S.
Larogue, Martin
Lepofsky, David
Lettner, Margo
Lipinski, Ted
Lowe, Lyla
Ma, Lilian
MacKay, David
MacLeod, Gayleanne
Makkar, Man
Makkar, Man
Makotoko, Josie
Markwick, Michael
Martinez, Jose Luis
Masters, Laura
Mathews, Julie
McDonald, Denise
Mercer, R.
Miles, Mrs. James
Miles, James
Milner, Ian
Montagnes, Carol
Morin, Michael
Mosher, Janet
Mouradian, Ted
Munsch, Wilma
Nalayini, S.

Nedelsky, Jennifer
Nieznanski, Leszek
Norman, Ken
Okonkwo, Clem
Orten, Helena
Parish, Lori-Anne
Parkinson, Wes
Pastran, Rosa
Pierson, Beth
Pike, Phillip
Poulantzas, N. M.
Profijt, Irene
Purhar, H.S.
Rae, Kyle
Rahn, Andrew
Ramcharitar, Boysie
Rawson, Martin
Reid, Robert F.
Rios, Oscar
Roach, Kent
Roberts, Edwin
Rockhill, Nathalie
Roundpoint, Lyn
Rowe, Reginald
Rowe, Pam
Rowe, Reg
Roy, C.
Russell, Worrick
Sampson, Fiona
Sayle, Sammy
Schleiffer, Gary
Scott, Craig
Seevaratnam, Sashika
Shannon, Leslie
Shawimbar, Sookho
Shecter, C.
Sherman, Helen
Siguencia, Nadir
Simins, B.
Singh, Uday
Singh, T.L.
Sivarajah, Renu
Soberman, Dan
Soremekun, Samuel
St. Lewis, Joanne
Stark, Chris
Stark, Mary
Stevens, Craig
Stratton, Jim
Subbarao, A.V.
Suriya, Senaka
Suriyakala, A.

Swinton, Katherine
Thomas, Melba
Thompson, Joseph
Thorup, Peter
Tobin, Jack
Tripp, Doreen
Turgeon, J.P.
Urgen, Tony
Varma, Joginder
Washington, H.
Wells, Tom
West, John
Weston, Robert
Williams, Maria
Williams, Jasmine
Williams-Shreve, Tracy
Wilmot, Annette
Wiscicki, Jacek
Xavier, Pat
Yorgason, Vern
Zanette, Mr.
Zangrilli, Diana
Zimmerman, Jean